OPINION NO. 2006-013

Syllabus:

A board of county commissioners has no authority to move to a reserve balance account general fund money, originally appropriated to the various county offices and agencies for goods and services, and pay the offices' and agencies' expenses from the reserve balance account.

To: Jonathan D. Blanton, Jackson County Prosecuting Attorney, Jackson, Ohio
By: Jim Petro, Attorney General, March 13, 2006

You have asked whether a board of county commissioners has the authority to move general fund money, which the board had originally appropriated to the various county offices and agencies for current expenses, to a reserve balance account established by the board in the general fund.[1] You state that the board of commissioners has ''zeroed out'' the agencies' general fund line items except for the payment of personnel and for items statutorily required to be appropriated to a particular office. The board of commissioners' intent is to control and pay the agencies' expenditures for goods and services from the reserve balance account. We conclude

[1] A county is required to establish a general fund, R.C. 5705.09, and ''[a]ll revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund,'' R.C. 5705.10. *See* R.C. 5705.05 (''[t]he purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made''). *See also* R.C. 5705.09 (listing other funds that must be established by counties and other political subdivisions).

that these actions exceed the statutory authority of the board of county commissioners.

In order to explain our conclusion, we begin with a brief overview of the comprehensive statutory scheme that directs counties and other political subdivisions in the development of their annual budgets.

Annual Appropriations

A board of county commissioners, as the county's taxing authority, is required to adopt an annual tax budget by July 15th of each year for the next succeeding fiscal year. R.C. 5705.28(A). *See* R.C. 5705.01(C); R.C. 5705.03. (A county's fiscal year is the calendar year. R.C. 9.34.) To assist the board of commissioners in the preparation of the tax budget, each county office, department, board, and commission must file, by June 1st, "an estimate of contemplated revenue and expenditures for the ensuing fiscal year." R.C. 5705.28(C)(1). The county commissioners' tax budget must include, *inter alia,* each agency's "necessary current operating expenses for the ensuing fiscal year ... classified as to personal services and other expenses, and the fund from which such expenditures are to be made." R.C. 5705.29(A)(1). The proposed budget must be available for public inspection for not less than ten days prior to its adoption, and the board of commissioners must hold at least one public hearing. R.C. 5705.30.

The board of commissioners and other taxing authorities are required then to submit their budgets by July 20th to the county auditor who, in turn, submits the budgets to the county budget commission.[2] R.C. 5705.30; R.C. 5705.31. The budget commission examines the budgets and ascertains "the total amount proposed to be raised in the county for the purposes of each subdivision." R.C. 5705.31. *See also* R.C. 5705.32(A) (the county budget commission "shall adjust the estimated amounts required from the general property tax for each fund, as shown by the tax budgets ... so as to bring the tax levies required therefor within the limitations specified in [R.C. 5705.01-.47], for such levies"); R.C. 5705.341 (the budget commission may not fix a rate of taxation above that necessary to produce the revenue needed by a political subdivision). The budget commission may revise the estimates of balances and receipts available from all sources for each fund (including the general fund) and must "determine the total appropriations that may be made therefrom." R.C. 5705.32(A).

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[2] The county budget commission consists of the county auditor, treasurer, and prosecuting attorney. R.C. 5705.27. The county's electors may vote to have two "at-large" members elected to the commission as well. *Id.* As explained by the court in *Village of South Russell v. Geauga County Budget Commission*, 12 Ohio St. 3d 126, 128, 465 N.E.2d 876 (1984), the budget commission is required "to examine each budget and ascertain the total amount proposed to be raised in the county for purposes of each subdivision and the taxing units therein. In general, by way of R.C. 5705.32, the commission is permitted to adjust estimated amounts required from the general property tax for each fund as shown by the budgets so as to bring the tax levies within the limitations specified under R.C. 5705.01 to 5705.47."

The budget commission then must certify its work, by September 1st, to the board of county commissioners, R.C. 5705.34; such certification must show the various funds of the county and include, *inter alia,* the receipts and unencumbered balances for each fund and the total appropriations that may be made therefrom. R.C. 5705.35(A). Attached to the budget commission's certification is a summary called the ''official certificate of estimated resources,'' which must show ''the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year.'' *Id.* Before the end of the year, the board of county commissioners must revise its tax budget so that the total estimate of expenditures from any fund will not exceed the total appropriations that may be made from the fund, as shown in the budget commission's certification. *Id.* The revised budget then serves as the basis of the county commissioners' annual appropriation measure, as described below. *Id.*

At the beginning of the fiscal year, the county budget commission may issue an amended official certificate if the county auditor determines that the revenue to be collected by the county will be more or less than the amount included in the original official certificate. R.C. 5705.36(A)(2)-(4). Also at the beginning of the fiscal year, the board of commissioners must pass an appropriation measure.[3] R.C. 5705.38(A). The appropriation measure must ''set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services.'' R.C. 5705.38(C).[4] The total appropriations made from any fund may not exceed the amount set forth as available for expenditure in the official certificate of estimated resources or amended certificate. R.C. 5705.36(A)(5). *See also* R.C. 5705.39. The county auditor is required to file with the board of commissioners a certificate that the total appropriations from each fund do not exceed the official certificate of estimated resources or amended official estimate before the appropriation measure can become effective, R.C. 5705.39, and the county may expend no money unless the money has been appropriated pursuant to R.C. Chapter 5705. R.C. 5705.41(B).

The board of commissioners may pass supplemental appropriation measures during the year, based on the revised tax budget or the official certificate of estimated resources, or amendments of the certificate. R.C. 5705.38(A). Although the board

[3] If the board of county commissioners wishes to postpone passage of the annual appropriation measure until an amended certificate showing the actual balances is received, the board may pass a temporary appropriation measure to meet the ordinary expenses of the county until April 1st. R.C. 5705.38(A).

[4] As part of its annual appropriation measure, a board of county commissioners may adopt a spending plan ''setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund.'' R.C. 5705.392. The spending plan must set forth a quarterly schedule of expenses and expenditures for each office and department and the amount appropriated for personal services. *Id.* Each office and department is ''limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan.'' *Id.*

may amend or supplement an appropriation measure, the amendment or supplement must comply with all provisions of law governing the original appropriation. R.C. 5705.40. *See also* 1987 Op. Att'y Gen. No. 87-018 at 2-123 (the power of the board of county commissioners to amend appropriations "is not unlimited," and the board "may not exercise its discretion in an arbitrary manner, but instead must do so in a sound and reasonable manner"). Furthermore, the board may not reduce an appropriation "below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation." *Id.*

You have stated that the board of county commissioners did not adopt a revised tax budget or receive an amended certificate of available resources before zeroing out the agencies' general fund moneys and moving the moneys to a reserve balance account. As set forth above, a board of county commissioners may amend or supplement an appropriation measure, but must comply with all provisions of law governing the original appropriation in doing so. R.C. 5705.38(A); R.C. 5705.40. Also as set forth above, the county auditor must certify that the total appropriations from each fund do not exceed the official certificate of estimated resources or amended official estimate before the appropriation measure can become effective, R.C. 5705.39, and the county may expend no money unless the money has been appropriated pursuant to R.C. Chapter 5705. R.C. 5705.41(B). If the board did not, in fact, comply with these statutory procedures in attempting to amend its appropriation measure, then the measure is not effective and no expenditures may be made pursuant thereto.

You have also stated that the board did not leave in agency budgets sufficient moneys to pay outstanding obligations that had been certified against the original appropriation, as required by R.C. 5705.40, *see* note , *infra*. Again, if the board failed to comply with R.C. 5705.40, the appropriation measure is not effective and no expenditures may be made pursuant thereto. *See also* R.C. 5705.45 (an officer or employee who authorizes the expenditure of public funds contrary to R.C. Chapter 5705 "shall be liable to the political subdivision for the full amount paid from the funds of the subdivision on any such order, contract, or obligation").

Reserve Balance Account

You have also asked whether R.C. 5705.13 would have authorized the actions undertaken by the board of county commissioners if the board had complied with all procedural requirements. R.C. 5705.13 states that, for the purpose of stabilizing the county budget "against cyclical changes in revenues and expenditures," the board of commissioners may establish a reserve balance account in "the general fund or in one or more special funds for operating purposes," and "accumulate currently available resources" therein.[5] R.C. 5705.13(A). The commissioners' resolution establishing the account must state the purpose for its establish-

[5] A reserve balance account must be distinguished from provision in the budget for contingencies. A tax budget's statement of necessary current operating expenses and the commissioners' appropriation measure may include a contingent expense "not designated for any particular purpose, and not to exceed three per cent of the

ment[6] and "the total amount of money to be reserved in the account." *Id.* The amount to be reserved in an account in a fiscal year may not exceed "five per cent of the revenue credited in the preceding fiscal year to the fund in which the account is established." *Id.*

The phrase, "currently available resources," is not statutorily explained or defined,[7] and arguably money that has been appropriated in compliance with R.C. Chapter 5705 is not "currently available." For purposes of our discussion, however, we will assume that money that has been appropriated is still "currently available" for purposes of R.C. 5705.13 if it can be transferred pursuant to an amended or supplemental appropriation measure, R.C. 5705.40.[8]

R.C. 5705.13 provides no explicit authority for the board of commissioners to use a reserve balance account as a repository for the moneys needed to pay county agencies' current expenses for goods and services, and the characteristics of a reserve balance account undermine rather than support the argument that the board has such authority. Although the language used in R.C. 5705.13(A)(1) to describe the purpose for which a reserve balance account may be established— "to stabilize subdivision budgets against cyclical changes in revenues and expenditures"—has not been explained further by the General Assembly, some insight may be gleaned

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total amount of appropriations for current expenses," R.C. 5705.29(A)(1); *see* R.C. 5705.40. By a vote of two-thirds of the members of the board of commissioners, "expenditures may be authorized in pursuance of such contingency appropriation ... for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure." R.C. 5705.40.

[6] A county may also establish reserve balance accounts to pay claims under a self-insurance program and claims under a retrospective ratings plan for workers' compensation. R.C. 5705.13(A)(2) and (3).

[7] *Cf.* R.C. 5705.221(C) (board of alcohol, drug addiction, and mental health services may establish a reserve balance account, which "shall contain those funds that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future"); R.C. 5705.222(C) (same for county board of mental retardation and developmental disabilities). *See also* R.C. 131.44 (description of surplus revenue credited to the State's budget stabilization fund, *see* note , *infra*).

[8] Money that clearly is not "currently available" is that which has been "set aside" for the payment of a particular obligation. As discussed above, no appropriation may be "reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation." R.C. 5705.40. *See also* R.C. 5705.41(D) (a county may not enter a contract or order the expenditure of money unless the county auditor has certified "that the amount required to meet the obligation ... 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").

from the court's description of the State's budget stabilization fund[9] in *State ex rel. Ohio Funds Management Bd. v. Walker,* 55 Ohio St. 3d, 1, 561 N.E.2d 927 (1990).

The court first explained that, "[c]ash flow deficiencies in the General Revenue Fund occasionally occur because of periodic fluctuations in current tax revenues in relation to expenses. These fluctuations may vary from month to month; however, the nature of the sources of this revenue is such that their cyclical fluctuations are generally understood and predictable. The major disbursements from the General Revenue Fund are also predictable." *Id.,* 55 Ohio St. 3d at 2. The court noted next that the General Assembly and state fiscal officers use a number of mechanisms for managing "temporary deficiencies in the General Revenue Fund cash flow," including a budget stabilization fund: "[t]he primary purpose of this fund is to serve as a reserve when the General Revenue Fund experiences a revenue shortfall." *Id.*

The nature of a reserve balance account is further illuminated by the statutory ceiling on the amount that can be reserved in any fiscal year— the amount may not exceed five percent of the revenue credited in the preceding year to the fund in which the account is established. If the FY 2005 general fund moneys of every county agency (even with the noted exceptions) were moved to the reserve balance account, the total amount in the account would undoubtedly exceed five percent of the revenue in the FY2004 general fund. This limitation on the size of a reserve balance account is inconsistent with its use as a repository for holding and dispensing general fund money for current operating expenses.

A reserve balance account is a tool for managing cash flow and temporary deficiencies caused by the timing of receipts and expenditure—it is not a source from which to pay regularly and routinely occurring expenses for goods and services. Therefore, R.C. 5705.13 does not authorize a board of county commissioners to move general fund money, originally appropriated to agencies for the purchase of goods and services, to a reserve balance account and control expenditures for current expenses therefrom.

Lack of Other Statutory Authority

Nor is there other statutory authority upon which the board may rely. An

[9] The State's budget stabilization fund was created pursuant to R.C. 131.43, which reads:

There is hereby created in the state treasury the budget stabilization fund. It is the intent of the general assembly to maintain an amount of money in the budget stabilization fund that amounts to approximately five per cent of the general revenue fund revenues for the preceding fiscal year. The governor shall include in the state budget he submits to the general assembly under section 107.03 of the Revised Code proposals for transfers between the general revenue fund and the budget stabilization fund for the ensuing fiscal biennium. The balance in the fund may be combined with the balance in the general revenue fund for purposes of cash management.

examination of R.C. Chapter 5705 reveals the General Assembly's intent that a county agency receive its own appropriations for current expenses, absent a specific statute to the contrary. *See generally Cuyahoga County Bd. of Mental Retardation v. Cuyahoga County Bd. of Commissioners,* 41 Ohio St. 2d 103, 109, 322 N.E.2d 885 (1975) (''Sections 5705.01 to 5705.47 of the Revised Code are an interrelating statutory scheme provided by the General Assembly,'' and ''[a]s such, they must be read together''). This intent appears throughout the budget development process. During preparation of the budget, the head of each agency must file with the board of county commissioners an estimate of contemplated revenue and expenditures, R.C. 5705.28(C)(1), and the board of commissioners must set forth in the tax budget a ''statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the [county], classified as to personal services and other expenses, and the fund from which such expenditures are to be made,'' R.C. 5705.29(A)(1). Most significantly, the board's appropriation measure must ''set forth separately the amounts appropriated for each office, department, and division, and within each, the amount appropriated for personal services.'' R.C. 5705.38(C). Similarly, a board of county commissioners' spending plan must be ''classified to set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and within each, the amount appropriated for personal services.'' R.C. 5705.392. Thus, R.C. Chapter 5705 requires the board of commissioners to provide separately for the appropriations of each agency, and offers no authority for the board to pool funds in a reserve balance account and pay all current expenses for goods and services therefrom.

Not only does the board lack statutory authority, but there are a myriad of statutes that mandate, in some respect, specific agency appropriations, and thus affirmatively constrict the authority of the board of commissioners to zero out those appropriations. Some statutes mandate appropriations for a particular item, purpose, or amount. You have stated, for example, that the board of county commissioners did not transfer to the reserve balance account the Furtherance of Justice (FOJ) accounts.[10] *See also, e.g.,* R.C. 1711.22 (the board of county commissioners ''shall, on the request of'' a county agricultural society that owns or leases real estate used as a fairground ''annually appropriate from the general fund not more than two thousand dollars nor less than fifteen hundred dollars for the purpose of encouraging agricultural fairs''). Some statutes more broadly require the board to appropriate funds sufficient to enable an agency to perform its functions and duties.[11] Still other statutes empower an agency to determine the amount of its own budget or a

[10] R.C. 325.071 states that, ''[t]here shall be allowed annually to the sheriff ... an amount equal to one-half of the official salary ... to provide for expenses that the sheriff incurs in the performance of the sheriff's official duties and in the furtherance of justice,'' and R.C. 325.12 provides the same for the county prosecuting attorney.

[11] *See, e.g.,* R.C. 5126.05(G) (a board of county commissioners ''shall levy taxes and make appropriations sufficient to enable the county board of mental retardation and developmental disabilities to perform its functions and duties''); R.C. 5153.35 (the board of county commissioners ''shall levy taxes and make appropriations sufficient to enable the public children services agency to perform its functions and

particular budget item, and require the board of commissioners to appropriate moneys to fund that established amount.[12] *See State ex rel. Durkin v. Youngstown City Council,* 9 Ohio St. 3d 132, 134, 459 N.E.2d 213 (1984) (where a statute vests sole discretion over a budgetary item in a body or individual other than the local legislative authority, the legislative authority has a mandatory duty to fund the item); *State ex rel. Trussell v. Meigs County Bd. of Commissioners,* 155 Ohio App. 3d 230, 235, 2003-Ohio-6084, 800 N.E.2d 381 (Meigs County), ¶ 8 (there are statutes which confer "authority on the office, not the general appropriating authority, to determine the reasonable and necessary expenses of the office . . . . the general appropriating authority has the burden of proving that the request is an abuse of discretion"). Statutes such as these that require an appropriation to be made to an agency would bar the board of county commissioners from removing that appropriation from the agency's budget.

We recognize that, where no statute mandates a particular appropriation, a legislative authority has broad discretion in establishing the amount of an agency's appropriation, subject to an abuse of discretion standard. *State ex rel. Durkin v. Youngstown City Council,* 9 Ohio St. 3d at 134 (where "the General Assembly had given the local legislative authority discretion to determine the amount of funding required," the agency being funded "was not entitled to an automatic appropriation of the monies requested even if the requests were reasonable"); *State ex rel. Trussell v. Meigs County Bd. of Commissioners,* at ¶¶ 12, 13 (the board of commissioners "has the final authority to determine the sheriff's budget, absent an abuse of its discretion.... an appropriating authority has discretion over how to fund all budgetary requests"). An abuse of discretion analysis pertains, however, only when a body is otherwise acting within the scope of its statutory powers. In *Reed v. Portage County Bd. of Commissioners,* 30 Ohio App. 3d 41, 506 N.E.2d 249 (Portage County 1985), for example, the board of county commissioners had the statutory authority to appropriate funds, but was found by the court to have abused its discretion by not appropriating sufficient funds to enable the clerk of courts to perform the duties of his office.

If an agency acts outside the scope of its authority, no abuse of discretion

duties"). *Cf. Stauffer v. Miller,* 79 Ohio App. 3d 100, 102, 606 N.E.2d 1037 (Washington County 1992) (interpreting R.C. 3501.17, which then stated that if the board of county commissioners "fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections, such board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated").

[12] *See, e.g., Lynch v. Gallia County Bd. of Commissioners,* 79 Ohio St. 3d 251, 257, 680 N.E.2d 1222 (1997) (pursuant to R.C. 5901.11, a board of county commissioners must appropriate funds to meet a lawful budget request of the county veterans service commission—"[t]he history of R.C. 5901.11 demonstrates that the General Assembly intended veterans service commissions to have authority over their budgets, without discretionary oversight by the boards of county commissioners").

determination is necessary—the agency simply may not act. The question you have raised is not a matter of what appropriation amount is "sufficient" for agency operations, but whether the board of commissioners has the authority to eliminate agencies' general fund appropriations for goods and services. The Attorney General may not, in rendering an opinion, exercise the discretion entrusted to another public official or body, *see* 2001 Op. Att'y Gen. No. 2001-032 at 2-193, and we are not attempting to do so here. Rather, our analysis leads us to conclude that the board of commissioners has exceeded its statutory authority by failing to appropriate to agencies general fund money for goods and services.[13]

The board of county commissioners had intended to require county agencies to obtain the board's approval before purchasing goods and services, as part of its plan to pay agencies' expenditures from the reserve balance account, and you have asked whether the board of county commissioners has the authority to require its pre-approval. Because we have concluded that the board has no authority in the first instance to establish a reserve balance account for use in the manner described, we need not address this question.

In conclusion, it is my opinion, and you are so advised that, a board of county commissioners has no authority to move to a reserve balance account general fund money, originally appropriated to the various county offices and agencies for goods and services, and pay the offices' and agencies' expenses from the reserve balance account.

[13] Not only has the board exceeded its own authority, but in doing so, has impinged upon the authority of other county officers and agencies to perform their statutorily assigned functions and duties. *See, e.g.,* 1941 Op. Att'y Gen. No. 3600, p. 190 (the board of county commissioners had no authority to resolve to reduce by fifty percent the county treasurer's appropriation for the compensation of the treasurer's deputy and clerk if the county treasurer appointed certain persons—such action abridged the power to appoint vested in the treasurer by the legislature).