

OPINION NO. 90-094**Syllabus:**

The monies in an industrial and entertainment fund, created and maintained pursuant to R.C. 5120.131, may be expended only for purchases which are reasonably determined to be for the entertainment and welfare of the inmates of the institution from whence the fund originated.

**To: George W. Wilson, Director, Department of Rehabilitation and Correction,
Columbus, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1990

I have before me your request for my opinion concerning the disbursement of monies from industrial and entertainment funds. Specifically, you wish to know "[w]hat limitations are to be observed by the Ohio Department of Rehabilitation and Correction in the expenditure of Industrial and Entertainment fund monies, as referenced in Section 5120.131 of the Revised Code[.]"

R.C. 5120.131 authorizes the establishment of industrial and entertainment funds. Under said section,

[e]ach managing officer of an institution under the jurisdiction of the department of rehabilitation and correction as described in section 5120.05 of the Revised Code, with the approval of the director of the department of rehabilitation and correction, may establish local institution funds designated as follows:

(A) Industrial and entertainment fund created and maintained for the entertainment and welfare of the inmates of the institutions under the jurisdiction of the department. The director shall establish rules and regulations for the operation of the industrial and entertainment fund.

See also 9 Ohio Admin. Code 5120-5-04(A) ("[s]ection 5120.131 of the Revised Code provides that the managing officer of an institution under the jurisdiction of the department of rehabilitation and correction and with the approval of the director of the department may establish a local institution fund designated as the industrial and entertainment fund").

It is an axiom that legislative intent is to be determined from the language used by the General Assembly in an enactment. *Stewart v. Trumbull County Bd. of Elections*, 34 Ohio St. 2d 129, 130-31, 296 N.E.2d 676, 677 (1973); *Katz v. Department of Liquor Control*, 166 Ohio St. 229, 231, 141 N.E.2d 294, 295-96 (1957). Where the intentions of the General Assembly are plainly and unambiguously set forth in an enactment, further recourse to any intrinsic aids of statutory construction to determine legislative intent is unnecessary. *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105-06, 304 N.E.2d 378, 381 (1973); *Katz v. Department of Liquor Control*, 166 Ohio St. at 231, 141 N.E.2d at 296; *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five).

The language of R.C. 5120.131 expressly declares that an industrial and entertainment fund is a local institution fund created and maintained for the entertainment and welfare of inmates. Upon review of the foregoing, it is clear that the General Assembly's intention in enacting R.C. 5120.131, was to provide a fund from which monies would be expended for purchases contributing to the entertainment and welfare of the inmates of the institution from whence the fund originated. *See* R.C. 5120.131(B) ("[a]ll profits from the commissary fund operations shall be paid into the industrial and entertainment fund and used only for the entertainment and welfare of inmates"); 9 Ohio Admin. Code 5120-5-05(D) ("[p]rofits from the commissary operation shall be paid into the industrial and entertainment fund and used only for the entertainment and welfare of inmates"); *see also* rule 5120-5-04(C)(1) ("[a]ll disbursements from the industrial and entertainment fund shall be used for purchases which exclusively benefit the inmates"). In light of the clear expression of legislative intent set forth in R.C. 5120.131, I find that the monies in an industrial and entertainment fund created and maintained pursuant to R.C. 5120.131, may be expended only for the entertainment and welfare of the inmates of the institution from whence the fund originated. *See generally State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 363-64, 106 N.E. 41, 45 (1914) (where the expenditure of public monies is limited by statute, the monies may only be spent in accordance with the statutory provision).

Your letter indicates that "consideration is being given to the expenditure of [the industrial and entertainment] fund to support or augment the inmate law library,

to fund contracts for rehabilitative programing, or to use the money to help finance a modest chapel." I note that the General Assembly did not place any limitation on the purchases to be made from an industrial and entertainment fund other than that they should be for the entertainment and welfare of the inmates. Additionally, it is clear from the language of R.C. 5120.131 that the determination as to whether an expenditure of monies from an industrial and entertainment fund is for the entertainment and welfare of the inmates rests with the Department of Rehabilitation and Correction.

Past opinions of the Attorney General, which have considered the appropriateness of expenditures from funds under the control of another public official, have determined that it is not appropriate for the Attorney General to exercise that public official's discretion with respect to the use of those funds. See, e.g., 1989 Op. Att'y Gen. No. 89-090 at 2-429, *modified in part on other grounds*, 1990 Op. Att'y Gen. No. 90-022; 1989 Op. Att'y Gen. No. 89-078 at 2-362 and 2-363; 1988 Op. Att'y Gen. No. 88-100 at 2-495; 1969 Op. Att'y Gen. No. 69-159 at 2-337; see also 1988 Op. Att'y Gen. No. 88-007 at 2-22; 1985 Op. Att'y Gen. No. 85-007 at 2-25. The exercise of any discretion in determining whether an expenditure is for the entertainment and welfare of the inmates, therefore, remains with the Department of Rehabilitation and Correction. I caution, however, that any determination as to whether an expenditure is for the entertainment and welfare of the inmates must be reasonable and within the limitations set by statute. See generally Op. No. 89-090 at 2-429; Op. No. 89-078 at 2-363; Op. No. 88-100 at 2-495; 1985 Op. Att'y Gen. No. 85-003 at 2-8; Op. No. 69-159 at 2-337.

Guidance for a determination on the appropriateness of an expenditure, however, may be gleaned from the rules and regulations established by the Director of the Department of Rehabilitation and Correction for the operation of the industrial and entertainment fund, pursuant to his responsibility under R.C. 5120.131. Specifically with respect to the disbursement of industrial and entertainment funds, rule 5120-5-04(C)(2) provides:

Disbursements from this fund may be made for, but shall not necessarily be limited to the following: recreation and entertainment equipment and supplies; repair and maintenance of such equipment purchased from these funds; Christmas presents; books, magazines, newspapers and other library supplies; films and film rentals; miscellaneous chapel expenses; occupational and/or activity therapy supplies and expenses.

Hence, the Department of Rehabilitation and Correction has set forth, through rule 5120-5-04(C)(2), a noninclusive list of examples of appropriate expenditures from an industrial and entertainment fund.

Rule 5120-5-04(C)(2), while not encompassing expressly the expenditures contemplated in your letter, nevertheless, does provide guidance in determining whether the proposed expenditures are for the entertainment and welfare of the inmates. The rule impliedly recognizes that the services provided by a library, a chapel, and activity therapy supplies, contribute to the entertainment and welfare of inmates. Consequently, if it is determined that the expenditures contemplated in your letter fall within the scope of rule 5120-5-04(C)(2), they are appropriate expenditures.

Based upon the foregoing, it is my opinion and you are hereby advised that the monies in an industrial and entertainment fund, created and maintained pursuant to R.C. 5120.131, may be expended only for purchases which are reasonably determined to be for the entertainment and welfare of the inmates of the institution from whence the fund originated.