

April 15, 2015

The Honorable Nicholas A. Iarocci
Ashtabula County Prosecuting Attorney
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, Ohio 44047-1092

SYLLABUS:

2015-015

A court of common pleas may expend moneys in the court's special projects fund to hire personnel to provide additional security at the entrance to the court house, within the court house generally, or whenever personnel of the sheriff's office are not immediately available to secure a courtroom, provided the court determines that the provision of additional security benefits the efficient operation of the court. (2001 Op. Att'y Gen. No. 2001-006, explained.)



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OPINION NO. 2015-015

The Honorable Nicholas A. Iarocci
Ashtabula County Prosecuting Attorney
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25 West Jefferson Street
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Dear Prosecutor Iarocci:

You have requested an opinion whether a court of common pleas may expend moneys in the court's special projects fund to hire personnel to provide security at the entrance to the court house, within the court house generally, or whenever personnel of the sheriff's office are not immediately available to secure a courtroom. You have provided the following information regarding court house security in Ashtabula County:

For several months prior to 2002, the Sheriff provided security staffing at the entrance of the Courthouse to monitor activity at and access to the Courthouse, including operation of metal detector equipment. In or about 2002 and due to budget restraints, the Sheriff removed security personnel from the Courthouse entrance. However, prior to and since 2002, the Sheriff has provided and continues to provide security to the courtrooms in the Courthouse.

For the past several years, the [Court of Common Pleas] has been utilizing its "special projects" funds collected pursuant to R.C. § 2303.201(E)(1) to fund and employ security at the Courthouse entrance. It is my understanding that the Sheriff is first contacted by courtroom staff to provide such security to the courtrooms when necessary. If Sheriff personnel are not immediately available to assist, the [court's] security employees located at the Courthouse entrance are then utilized.

The facts you have provided indicate that the court personnel employed by the Ashtabula County Court of Common Pleas provide security in addition to the security that is provided by the county sheriff.

Court of Common Pleas and Special Projects Fund Moneys

Article IV, Section 4 of the Ohio Constitution establishes a court of common pleas in each county of the state. When exercising its administrative authority, a court of common pleas is a creature of statute. 2011 Op. Att'y Gen. No. 2011-047, at 2-381. As a creature of statute in

administrative matters, a court of common pleas has only “such power as is expressly delegated by the General Assembly together with such implied power as is necessary to carry into effect the power expressly delegated.” *Id.* (quoting 1938 Op. Att’y Gen. No. 2308, vol. II, p. 821, at 824). To expend moneys, “[a] court of common pleas must have clear and distinct authority[.]” 2011 Op. Att’y Gen. No. 2011-047, at 2-381.

The establishment of a special projects fund for a court of common pleas and expenditures of moneys from that fund are addressed in R.C. 2303.201(E)(1), which provides, in pertinent part:

The court of common pleas may determine that, *for the efficient operation of the court*, additional funds are necessary to acquire and pay for *special projects of the court*, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, *the hiring and training of staff*, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. (Emphasis added.)

A special project of the court must benefit the efficient operation of the court and must have a sufficient connection to the court so that it constitutes a project “of the court.” *See* 2011 Op. Att’y Gen. No. 2011-047, at 2-381 (“a court of common pleas may not expend special project fund moneys collected pursuant to R.C. 2303.201(E)(1) to provide financial assistance to a veterans treatment court operated by a municipal court”); 2009 Op. Att’y Gen. No. 2009-001, at 2-3 (“it is difficult to imagine circumstances in which a program that is not established, operated, or supervised by a court would be considered a special project ‘of’ the court”).

Once a court of common pleas determines that additional moneys are necessary for a special project of the court, the court may promulgate a rule requiring a fee to be charged upon “the filing of each criminal cause, civil action or proceeding, or judgment by confession.” R.C. 2303.201(E)(1). The special projects fees collected by the court “shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project.” *Id.* Disbursements from a general or specific special projects fund shall be made by “an order of the court, subject to an appropriation by the board of county commissioners, in an amount no greater than the actual cost to the court of a project.” *Id.*

It is clear from the language of R.C. 2303.201(E)(1) that a special project of a court of common pleas may include the hiring of additional staff when the court determines that the additional staff will benefit the efficient operation of the court. *See* 2011 Op. Att’y Gen. No. 2011-047, at 2-380 (“[s]pecial project fund moneys may be used for any ‘special projects’ of the court, including *expenditures for staff*, equipment, facilities, programs, training, or any services related to such projects” (emphasis added)). We shall now consider whether the broad authority to hire staff provided by R.C. 2303.201(E)(1) includes the authority to hire security personnel.

Hiring Security Personnel as a Special Project of a Court of Common Pleas

The provision of security to a court of common pleas is primarily the responsibility of the board of county commissioners and the county sheriff. 1984 Op. Att’y Gen. No. 84-008, at 2-22. A board of county commissioners’ responsibilities are rooted in R.C. 307.01, which sets forth, *inter alia*, the board’s duty to provide a court house and to appropriate moneys to a court of common pleas, and R.C. 305.16, which authorizes the board to hire “watchmen ... and other employees as are necessary for the care and custody of the court house[.]” See *Britt v. Franklin Cnty. Comm’rs*, 148 Ohio App.3d 395, 2002-Ohio-3679, 773 N.E.2d 612, at ¶23 (Franklin County) (R.C. 305.16 and R.C. 307.01(A) authorize the board of county commissioners to establish a security screening program at the entrance to the Franklin County Government Center and the Franklin County Child Support Enforcement Agency); see also 2001 Op. Att’y Gen. No. 2001-006, at 2-40 (“[b]ecause a board of county commissioners is required by R.C. 307.01(A) to manage and control the courthouse, the board is required to keep the courthouse safe and in good repair”); 1996 Op. Att’y Gen. No. 96-015 (syllabus) (“[a] board of county commissioners is obligated to comply with an appropriation request from the court of common pleas for implementation of a courthouse security plan, unless the board demonstrates that the request is either unreasonable or unnecessary for the proper administration of the court’s business”).

A county sheriff’s duty to provide security to a court of common pleas is found in R.C. 311.07(A), which provides, in pertinent part, that “[t]he sheriff shall attend upon the court of common pleas and the court of appeals during their sessions, and, when required, shall attend upon the probate court.” 2001 Op. Att’y Gen. No. 2001-006, at 2-40. R.C. 311.07(A) also provides that “[u]nder the direction and control of the board of county commissioners, such sheriff shall have charge of the court house.”

While the responsibility to secure a court of common pleas lies first with the board of county commissioners and the county sheriff, authority to provide for the security of a court of common pleas is not limited to those officials. Several sections of the Revised Code authorize a court of common pleas to employ personnel that may assist in securing the court. See 1984 Op. Att’y Gen. No. 84-008, at 2-22 to 2-23 (discussing a court of common pleas’ authority to appoint deputy sheriffs and additional court security personnel). R.C. 2301.12(B) authorizes a court of common pleas to appoint a criminal bailiff, who is a deputy sheriff. A criminal bailiff “act[s] for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county.” R.C. 2301.15. In accordance with the directives of the county sheriff, the criminal bailiff “shall be present during trials of criminal cases in [the court of common pleas and the probate court] and during such trials perform all the duties as are performed by the sheriff.” *Id.*

In lieu of a criminal bailiff, a court of common pleas with four or more judges may appoint a chief court constable. R.C. 2301.12(C). A chief court constable “shall be a deputy sheriff, shall perform all the duties and give a bond required to be performed and given by a criminal bailiff, and perform such other duties as the court directs.” *Id.* While a criminal bailiff performs his duties under

the direction and authority of the county sheriff, R.C. 2301.15, a chief court constable acts in accordance with the direction of the judges of the court of common pleas, R.C. 2301.12(C).¹

Any court of common pleas may appoint any number of court constables. R.C. 2701.07. R.C. 2701.07 provides, “[w]hen, in the opinion of the court, the business thereof so requires, each court of common pleas ... may appoint one or more constables to *preserve order*, attend the assignment of cases in counties where more than two judges of the court of common pleas regularly hold court at the same time, and discharge such other duties as the court requires.” (Emphasis added.)² Thus, in

¹ The Ashtabula County Court of Common Pleas may not appoint a chief court constable as the court has three judges. R.C. 2301.02(B).

² Generally, in employment matters, a court of common pleas’ authority is limited to those powers expressly provided by statute and any powers that may be implied as necessary to carry out its express powers. *See* 1992 Op. Att’y Gen. No. 92-009, at 2-25 (discussing the statutory and implied powers of a court of common pleas to employ court personnel); 1987 Op. Att’y Gen. No. 87-063, at 2-390 (questioned on other grounds by 2008 Op. Att’y Gen. No. 2008-004, and syllabus, paragraph 2 modified on other grounds by 2009 Op. Att’y Gen. No. 2009-009) (“[p]ast Attorneys General have consistently found the powers of courts of common pleas with regard to the employment of court personnel to be limited to those granted by statute”); 1957 Op. Att’y Gen. No. 188, p. 54, at 56 (given the “express and unambiguous” statutes, a court of common pleas with only one judge may not hire two criminal bailiffs and divide the salary among the two). *But see* 1989 Op. Att’y Gen. No. 89-029, at 2-123 (a common pleas court has inherent authority to hire maintenance and janitorial staff “as the proper and efficient administration of justice requires”).

However, providing additional security personnel to protect judges, attorneys, litigants, and witnesses participating in cases in a court of common pleas may come within the court’s inherent authority “to preserve order and decorum in the courtroom, and to protect the rights of the parties and witnesses.” *State ex rel. The Repository, Div. of Thompson Newspapers, Inc. v. Unger*, 28 Ohio St. 3d 418, 425, 504 N.E.2d 37 (1986) (Celebrezze, C.J., concurring); *see State ex rel. Judges of Toledo Mun. Court v. Mayor of Toledo*, 179 Ohio App. 3d 270, 2008-Ohio-5914, 901 N.E.2d 321, at ¶36 (Lucas County) (“decisions regarding specific security requirements are within the municipal court’s purview and control. The court’s judges are in the best position to know how many officers are needed to effectively secure courtrooms and the courthouse, whether such officers should be full-time or part-time employees, and which agency would best be able to provide qualified officers”); *State ex rel. Bd. of Cnty. Comm’rs of Cuyahoga Cnty., Ohio v. Common Pleas Court of Cuyahoga Cnty., Ohio*, No. 36307, 1976 WL 191210, at *3 (Cuyahoga County August, 26, 1976) (trial court’s order requiring the board of county commissioners to pay the cost of hiring private security guards to protect a material witness in a criminal case could “arguably be said to be founded upon R.C. 2701.07,” however, the order was ultimately upheld “on the principle that the trial court possessed inherent authority to enter the order”); *In re Obstruction of Summit Cnty. Driveway by Akron Police Dep’t*, 108 Ohio App. 338, 341, 161 N.E.2d 452 (Summit County 1959) (“[o]ver and beyond the powers given

addition to the duties imposed upon a board of county commissioners and a county sheriff to provide security to a court of common pleas, the judges of a court of common pleas may also provide for the court's security by appointing a criminal bailiff, a chief court constable, when appropriate, or additional court constables.³

As discussed above, a special project under R.C. 2303.201(E)(1) may include hiring court staff. Moreover, a court of common pleas may appoint personnel who provide security to the court. R.C. 2301.12(B), (C); R.C. 2301.15; R.C. 2701.07. Therefore, hiring personnel to provide security to a court of common pleas may constitute a special project of the court when the judges of the court of common pleas determine that the additional security will benefit the efficient operation of the court. 2001 Op. Att'y Gen. No. 2001-006, at 2-40 to 2-41 n.2 (“[t]he language of R.C. 2303.201(E)(1) suggests that, if a court of common pleas determined that it would be beneficial to ‘the efficient operation of the court’ to supplement the security services provided to the court by the county sheriff pursuant to R.C. 311.07, such supplemental services would constitute a ‘special project’ for purposes of that statute”); *see also* 1997 Op. Att'y Gen. No. 97-049 (syllabus, paragraph 1) (“[s]hould a municipal court decide that the appointment of an additional bailiff under R.C. 1901.32(A)(1) is a special project that would benefit the efficient operation of the court, the hiring of such additional bailiff may be funded with the moneys generated by the fee imposed in accordance with the first paragraph of [R.C. 1901.26(B)(1)],⁴ special projects fund moneys”). A court of common pleas must exercise reasonable discretion in determining whether the employment of additional security personnel is a proper use of the court's special projects fund moneys. *See* 2012 Op. Att'y Gen. No. 2012-015, at 2-126 (generally, “(1) the determination of whether an expenditure satisfies a particular statutory purpose lies in the discretion of the officer or governmental entity having the power to make the expenditure, and (2) that discretion must be exercised in a reasonable manner”).

You also question whether special projects fund moneys of a court of common pleas may be expended to hire security personnel to monitor the entrance to a court house when offices that are not a part of the judicial branch of county government also are located in the court house. It is commonplace, and lawful, for county offices other than a court of common pleas to be located in a

by the Constitution and the statutes to the courts, a court possesses all reasonable powers necessary to preserve the free and untrammelled exercise of its functions”).

³ Other provisions of the Revised Code provide authority for a court of common pleas or its divisions to appoint personnel that may assist in providing security to the court. *See, e.g.*, R.C. 2301.17 (appointment of an additional temporary criminal bailiff); R.C. 2151.13 (juvenile court's authority to appoint a bailiff and other employees).

⁴ 1997 Op. Att'y Gen. No. 97-049 (syllabus, paragraph 1) contains a typographical error. Instead of citing R.C. 1901.26(B)(1) as the statutory authority for imposing a fee to pay for a special project of a municipal court, the opinion's syllabus, paragraph 1 cites R.C. 1901.32(A)(1), which confers authority to hire a bailiff. We have corrected the error in this opinion.

court house. *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 65, 119 N.E. 136 (1917) (“[t]he county commissioners are also authorized to provide suitable offices for the county officers, and this they may do, either in a separate building, or in the courthouse itself”); 1989 Op. Att’y Gen. No. 89-029, at 2-121 (“[w]hile the courthouse is primarily intended to house the courts as the seat of justice in the county, it need not be used exclusively for court purposes”). Nevertheless, “a court of general jurisdiction located in a courthouse has a paramount right to the space therein which is essential to the proper and efficient operation of such court[.]” *State ex rel. Hottle v. Bd. of Cnty. Comm’rs of Highland Cnty.*, 52 Ohio St. 2d 117, 120, 370 N.E.2d 462 (1977). “[A] court of general jurisdiction has great inherent power to acquire and control the ordinary facilities which are essential to secure and safeguard the free and untrammelled exercise of its functions.” *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 154, 126 N.E.2d 57 (1955). When appropriate, a court’s exercise of this inherent power extends to areas of a court house that are not exclusively used or occupied by the court. 1976 Op. Att’y Gen. No. 76-064, at 2-217 (“this power does, in certain circumstances, extend beyond the actual physical enclosure of ... the court to the common hallways[,] the exterior, grounds, etc.... Where necessity exists, the power of the court may extend beyond the actual physical enclosure of the court’s chambers”).

A court’s ability to ensure its security necessarily involves positioning security measures at the entrance to the court house. If a threat reaches rooms or areas within a court house that are adjacent to, but not within the rooms or areas occupied by the court, that threat may pose a danger to the court. It is, thus, reasonable for a court of common pleas to implement security measures at the entrance to the court house. So long as the judges of the court of common pleas determine that the additional security personnel at the entrance are essential to the exercise of the court’s functions, the court’s authority to control the facilities may extend to the entrance of the court house. If a court of common pleas determines that the placement of additional security personnel at the entrance to the court house is beneficial to the efficient operation of the court, the court may conclude that the employment and placement of such personnel at the entrance to the court house constitute a special project of the court. That offices other than the court of common pleas also benefit from the security at the entrance to the court house does not negate the benefit that the additional security provides the court. *See* 2012 Op. Att’y Gen. No. 2012-039 (syllabus) (special projects fund moneys of a county court may be used to purchase supplies, such as trees, that will be used on public property as part of a community service program when the judges determine that the community service program benefits the efficient operation of the court).

2001 Op. Att’y Gen. No. 2001-006

Your opinion request refers to 2001 Op. Att’y Gen. No. 2001-006, which concluded that “a court of common pleas may not use special projects fund moneys to pay the county sheriff for security services that the sheriff is required by R.C. 311.07(A) to provide to the court.” *Id.* at 2-41 (footnote omitted). The opinion reasoned that because R.C. 2303.201(E)(1) authorizes the imposition of a special projects fee to provide “additional funds” to the court, moneys collected under that statute are intended by the General Assembly to “supplement, but not replace, the funds otherwise provided for the court through ordinary funding mechanisms.” *Id.* at 2-40. Insofar as a county sheriff is statutorily required to provide security to a court of common pleas, the security services that the sheriff provides

in accordance with those statutory requirements are ordinary operating expenses of a county sheriff. *Id.* at 2-40 to 2-41. Consequently, the ordinary operating expenses a county sheriff incurs in providing security to a court of common pleas cannot constitute a special project of the court. *Id.* at 2-41. The opinion suggests, however, that a special project of a court of common pleas may include supplementing the security services provided to the court by the county sheriff if the court determines that supplementing the security services benefits the efficient operation of the court. *Id.* at 2-40 to 2-41 n.2.

The analysis in 2001 Op. Att’y Gen. No. 2001-006 appears to base the propriety of a court’s expenditure of special projects fund moneys upon, *inter alia*, whether the expenditure is meant to supplement moneys or services that are otherwise provided to a court of common pleas or whether the expenditure of special projects fund moneys replaces those moneys or services. *See* 2001 Op. Att’y Gen. No. 2001-006, at 2-40 to 2-41. The opinion also notes that a public office may not be charged for the performance of statutory duties by another county office absent statutory authorization. 2001 Op. Att’y Gen. No. 2001-006, at 2-41 n.3 (quoting 1982 Op. Att’y Gen. No. 82-011 (syllabus, paragraph 1)). That principle is a primary reason why an expenditure of special projects fund moneys under R.C. 2303.201(E)(1) may not include paying a county sheriff for security services he is required to provide under R.C. 311.07(A). A special project that pays a county sheriff to perform his statutory duties when a statute does not authorize charging the court for those services effectively replaces the county sheriff’s duty to provide those services as part of his operating expenses. Accordingly, a court may expend special projects fund moneys to supplement, but not replace, a county sheriff’s obligation to provide security to the court.⁵ Determining whether a court’s expenditure of special projects fund moneys supplements or replaces a county sheriff’s obligation to provide security to the court will depend upon the facts and circumstances of the expenditure. A critical aspect of this inquiry is whether the county sheriff has exercised reasonable discretion and acted in good faith in discharging his duties under R.C. 311.07.

R.C. 311.07(A) directs a county to sheriff to “attend upon the court of common pleas” while the court is in session. This language means that a county sheriff shall provide a minimum level of security to a court of common pleas. In carrying out his duty under R.C. 311.07, a county sheriff may exercise reasonable discretion when assigning duties to deputies within the court house. *See State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 458, 76 N.E.2d 294 (Allen County 1947) (“[a] sheriff is vested with absolute discretion to determine what deputies shall be employed, the length of their employment, and the duties of his office to be performed by them”); 1991 Op. Att’y Gen. No. 91-063,

⁵ In some contexts, a court of common pleas’ special projects fund moneys may replace moneys otherwise provided by statute for the operation of a court of common pleas. For example, a court may use special project fund moneys to acquire equipment. R.C. 2303.201(E)(1). At the same time, expenses related to acquiring equipment may be included in a court of common pleas’ request for an appropriation for administrative expenses from the board of county commissioners in accordance with R.C. 307.01(B). If a court does not request an appropriation for the equipment, the special projects fund moneys effectively replace moneys that could have been appropriated to the court.

at 2-300 (“county sheriffs ... are responsible for determining the duty status of, and the duties to be performed by, the individuals employed within their law enforcement agency”); 1986 Op. Att’y Gen. No. 86-023, at 2-121 (“the sheriff may exercise reasonable discretion in determining the manner in which he will exercise his power to preserve the public peace”). *But see State ex rel. Judges of Toledo Mun. Court v. Mayor of Toledo*, 179 Ohio App. 3d 270, 2008-Ohio-5914, 901 N.E.2d 321, at ¶36 (Lucas County) (“decisions regarding specific security requirements are within the municipal court’s purview and control”).

A court of common pleas’ inherent authority “to secure and safeguard the free and untrammelled exercise of [its] judicial functions[,]” *State ex rel. Bd. of Cnty. Comm’rs of Cuyahoga Cnty., Ohio v. Common Pleas Court of Cuyahoga Cnty., Ohio*, No. 36307, 1976 WL 191210, at *3 (quoting *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, 46 N.E.2d 865 (1943) (syllabus, paragraph 2)), includes the authority to employ personnel to provide security in an area of the court house that is not otherwise secured by the county sheriff. *See Fraternal Order of Police v. Erie Cnty. Sheriff*, 6th Dist. No. E-10-005, 2010-Ohio-4702, at ¶¶7-8, 56-59 (county funding used for the court of common pleas’ employment of civilian personnel to operate a metal detector and x-ray equipment at the court house when sheriff’s deputies were not available for that purpose was not prohibited by a collective bargaining agreement between the sheriff and the Fraternal Order of Police in light of the court’s inherent authority to determine its necessary administrative expenses); *State ex rel. Judges of Toledo Mun. Court v. Mayor of Toledo* at ¶36. Even though a court of common pleas has authority to implement security measures and to employ security personnel, a county sheriff may not exercise his discretion under R.C. 311.07 in an unreasonable manner or fail to perform his statutory duty in good faith. A court of common pleas’ determination that it is necessary for the efficient operation of the court for the court to expend special projects fund moneys to hire personnel to provide additional security cannot be based upon a failure of a county sheriff to reasonably, and in good faith, discharge his duties under R.C. 311.07(A).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a court of common pleas may expend moneys in the court’s special projects fund to hire personnel to provide additional security at the entrance to the court house, within the court house generally, or whenever personnel of the sheriff’s office are not immediately available to secure a courtroom, provided the court determines that the provision of additional security benefits the efficient operation of the court. (2001 Op. Att’y Gen. No. 2001-006, explained.)

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General