

March 1, 2023

The Honorable Ronald L. Welch
Muskingum County Prosecuting Attorney
P.O. Box 189, 27 North Fifth Street, Suite 201
Zanesville, Ohio 43702-0189

SYLLABUS:

2023-004

1. Because R.C. 3335.37 specifically mandates that money obtained from a tax levy or from the general fund of the county be paid into the Ohio State University Extension fund, a county cannot directly distribute the funds to the Ohio State University Extension office in the county.
2. A board of county commissioners has no authority to charge the Ohio State University Extension rent or utilities for the county office space provided to it pursuant to R.C. 3335.36.



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2023-004

The Honorable Ronald L. Welch
Muskingum County Prosecuting Attorney
P.O. Box 189, 27 North Fifth Street, Suite 201
Zanesville, Ohio 43702-0189

Dear Prosecutor Welch:

You have requested an opinion regarding the Ohio State University (“OSU”) Extension office operating within your county. I have framed your questions as follows:

1. May a board of county commissioners appropriate funds directly to a local OSU Extension office or must such funds appropriated under R.C. 3335.37, whether generated from a levy or allocated from the county general fund, be directly provided to the OSU Extension fund established pursuant to R.C. 3335.35?
2. May a board of county commissioners charge the local OSU Extension office for the use of office space, including the cost of providing utility services to the office, given the requirement under R.C. 3335.36 that the “employees [of the OSU Extension] shall have offices provided by the county”?

3. If a board of county commissioners is permitted to appropriate funds directly to a county OSU Extension office, may such funding include money to cover the cost of rent and utility services for office space provided by the county to a county OSU Extension office?

For the reasons that follow, I find that the money from a tax levy or the county general fund must be paid to the credit of the OSU Extension fund, and that the board of county commissioners has no authority to charge the OSU Extension for rent or utility services for the county office space provided to it under R.C. 3335.36. As a result of my answer to question one, question three is moot.

I

Question one asks if county commissioners can appropriate funding obtained pursuant to R.C. 3335.37 directly to the OSU Extension office as opposed to giving it to the credit of the OSU Extension fund. I conclude that they cannot.

R.C. 3335.35 creates the OSU Extension fund under the “custody and control of the board of trustees of the Ohio state university.” The fund “shall consist of *all moneys* appropriated, given, granted, or bequeathed to the university for the use of OSU extension by the United States, this state, any political subdivision of this state, or any person.” *Id.* (Emphasis added). And the board of trustees of OSU “shall have responsibility for expenditure of all moneys in the fund in accordance with state and federal law and memoranda of

agreement between the university and the United States department of agriculture.” *Id.* In sum, R.C. 3335.35 creates the OSU Extension fund into which all money provided to the OSU Extension office flows, and the board of trustees for OSU is charged with dispersing those funds.

R.C. 3335.37 states in relevant part:

The board of county commissioners of any county may levy a tax, within the limitations prescribed by law, and appropriate money from the proceeds thereof or from the general fund of the county to be paid to the Ohio state university *to the credit of the OSU extension fund* created by section 3335.35 of the Revised Code and expended for the purposes prescribed in section 3335.36 of the Revised Code for the benefit of the citizens of that county. (Emphasis added).

Because R.C. 3335.37 directs that the appropriated money be placed in the OSU Extension fund, a board of county commissioners is not permitted to instead provide money directly to the county OSU Extension office. 2022 Op. Att’y Gen. No. 2022-010, Slip Op. at 4; 2-52, quoting *Pelletier v. City of Campbell*, 153 Ohio St.3d 611, 2018-Ohio-2121, 109 N.E.3d 1210, ¶ 14 (“when the language of a statute is plain and unambiguous, the statutory text controls”). Therefore, the answer to your first question is “no,” a county cannot allocate money obtained pursuant to R.C. 3335.37 directly to the county OSU Extension office.

II

Question two asks if a board of county commissioners may charge the OSU Extension office rent and utilities for the space provided to it under R.C. 3335.36. Once more, I answer in the negative.

R.C. 3335.36 states that employees of the OSU Extension “*shall have offices provided by the county* or other political subdivision in which they serve in which bulletins and other educational materials of value to the people may be consulted and through which the employees may be reached.” (Emphasis added). The use of the word “shall” in R.C. 3335.36 places a mandatory duty on the county to provide office space to the OSU Extension. 2001 Op. Att’y Gen. No. 2001-013, at 2-74 (“the use of the word ‘shall’ in [a statute] to describe the board of county commissioners’ duties indicates that the board of county commissioners has a mandatory duty”); *Miller v. Miller*, 132 Ohio St.3d 424, 2012-Ohio-2928, 973 N.E.2d 228, ¶ 28. Thus, under the facts set forth in your request, the provision of office space under R.C. 3335.36 by a county for the employees of the OSU Extension serving in the county is not discretionary—a county *must* provide the office space.

“[A] board of county commissioners is a creature of statute that has only such powers as it is granted by statute, either expressly or by necessary implication.” *E.g.*, 2001 Op. Att’y Gen. No. 2001-024, at 2-134. R.C. 3335.36 specifies that the county must provide the employees of the OSU Extension in the county with office space, but it does not state that a board of county commissioners may charge the OSU Extension for rent and

utilities for the office space provided. “It is well established that, when a board of county commissioners has a duty to provide space for the operations of governmental entities, the board has no authority to charge such entities for rental of such space or for utilities used in that space, absent statutory authority to impose such a charge.” 2005 Op. Att’y Gen. No. 2005-028, at 2-292, citing 2001 Op. Att’y Gen. No. 2001-024, at syllabus; 1986 Op. Att’y Gen. No. 86-104, at 2-574; 1982 Op. Att’y Gen. No. 82-011, at syllabus paragraph one. Moreover, had the general assembly intended to permit or require a county to charge the OSU Extension rent and utilities for the office space in the county provided under R.C. 3335.36, the general assembly could have easily done so. *See* 2005 Op. Att’y Gen. No. 2005-028, at 2-293; *see also* R.C. 307.09(A) and R.C. 307.29.

Given the mandatory duty imposed upon a county by R.C. 3335.36 to provide office space and the absence of any authority to charge rent and utilities, I conclude that a board of county commissioners cannot charge the OSU Extension for rent and utilities for the office space provided to it under R.C. 3335.36.

III

Your third question depends upon an affirmative answer to your first question. Since the answer to your first question is “no,” your third question is moot.

Conclusions

Accordingly, it is my opinion, and you are hereby advised that:

1. Because R.C. 3335.37 specifically mandates that money obtained from a tax levy or from the general fund of the county be paid into the Ohio State University Extension fund, a county cannot directly distribute the funds to the Ohio State University Extension office in the county.
2. A board of county commissioners has no authority to charge the Ohio State University Extension rent or utilities for the county office space provided to it pursuant to R.C. 3335.36.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST
Ohio Attorney General