

November 19, 2014

The Honorable Paul A. Dobson  
Wood County Prosecuting Attorney  
One Courthouse Square  
Office Building, 4th Floor  
Bowling Green, Ohio 43402

SYLLABUS:

2014-040

R.C. 307.515 does not impose a \$7,000 limit upon deposits in a county law library resources fund by the treasurer of a municipal corporation for state traffic law moneys collected by a municipal court.



# MIKE DEWINE

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OPINION NO. 2014-040

The Honorable Paul A. Dobson  
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Dear Prosecutor Dobson:

You have requested an opinion about the deposit of state traffic law fines by the treasurer of a municipal corporation in the county law library resources fund pursuant to R.C. 307.515. Your specific questions are as follows:

1. Under R.C. 307.515, is there a \$7,000 cap on the total sum of state traffic law fines required to be deposited by the treasurer of a municipal corporation in the county law library resources fund?
2. If R.C. 307.515 does not impose a \$7,000 cap on the total sum of state traffic law fines to be deposited by the treasurer of a municipal corporation in the county law library resources fund, and the treasurer of the municipal corporation has erroneously imposed a cap, should the treasurer of the municipal corporation pay retroactively the amounts withheld by the municipal corporation in excess of the \$7,000 cap?

You explain that the City of Bowling Green wrote a letter in October 2012 to the Librarian of the Wood County Law Library stating that the City's statutory obligation to deposit money in the county's law library resources fund is capped at \$7,000 per year. You further explain that this is contrary to past practice. In prior years, deposits amounted to more than \$50,000 per year. "Beginning in 2012," the City of Bowling Green has limited its deposits into the county's law library resources fund to \$7,000. According to your letter, the "substantially decreased funding cannot sustain" the Wood County Law Library "in its present valuable form."

A county law library resources board (LLRB) is created in each county and is required to "provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county." R.C. 307.51(B); *see also* 2010 Op. Att'y Gen.

No. 2010-014, at 2-94 (county LLRB is responsible for operating a county law library).<sup>1</sup> An LLRB is supported with moneys from the county law library resources fund, created in the county treasury. R.C. 307.514. The law library resources fund receives moneys from several sources. The fund receives revenue required to be deposited into the fund pursuant to R.C. 307.51(D)(1), including fees for law library services, and gifts or bequests made to the fund. R.C. 307.514. Revenue appropriated to the LLRB by the board of county commissioners from the county general fund also is deposited in the county law library resources fund. R.C. 307.513; R.C. 307.514. The fund also receives “all revenue that is required to be deposited into the fund pursuant to ... [R.C. 307.515].” R.C. 307.514.

R.C. 307.515 requires that a portion of fines, penalties, and forfeited bail moneys collected by various courts be deposited in the county law library resources fund. Specifically, R.C. 307.515(A) requires clerks of municipal courts to deposit moneys in the county law library resources fund, in part, as follows:

(A) All fines and penalties collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state, except a portion of those fines, penalties, and moneys that, plus all costs collected monthly in those state cases, equal the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of that court in state cases, shall be retained by the clerk of that municipal court and shall be deposited by the clerk each month in the county law library resources fund that is created under [R.C. 307.514] in the county in which that municipal corporation is located. The sum that the clerk of the municipal court deposits in the county law library resources fund shall in no month be less than twenty-five per cent of the amount of such fines, penalties, and moneys received in that month, without deducting the amount of the allowance of the board of county commissioners to the judges, clerk, and prosecuting attorney.

The total amount paid under this section in any one calendar year by the clerks of all municipal courts in any one county to the county law library resources fund shall in no event exceed the following amounts:

....  
(3) In counties having a population in excess of one hundred thousand but not in excess of one hundred fifty thousand, ten thousand dollars and the maximum amount paid by any of such courts shall not exceed seven thousand dollars in any calendar year.

....

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<sup>1</sup> R.C. 307.516 permits two or more adjacent counties to form a multi-county law library resources commission to carry out the duties and responsibilities conferred upon a county law library resources board.

Similarly, R.C. 307.515(B) requires the county treasurer to deposit a portion of fines, penalties, and forfeited bail moneys collected by a county court to the county law library resources fund. And R.C. 307.515(C) requires the clerk of the court of common pleas and the clerk of the probate court to deposit a portion of fines, penalties, and forfeited bail moneys collected by the court of common pleas and the probate court, respectively, to the county law library resources fund.

(B) The county treasurer, upon the voucher of the county auditor, shall deposit fifty per cent of all moneys collected by a county court accruing from fines, penalties, and forfeited bail, unless otherwise distributed by law, in the county law library resources fund in that county that is created under [R.C. 307.514]. The county treasurer shall deposit those moneys into that fund within thirty days after those moneys have been paid into the county treasury by the clerk of the county court.

....  
(C) In each county of the state, the clerk of the court of common pleas and the clerk of the probate court shall retain all fines and penalties collected by, and moneys arising from forfeited bail in, the court of common pleas and the probate court of that county for offenses and misdemeanors brought for prosecution in those courts in the name of the state and monthly shall deposit those moneys in the county law library resources fund in that county that is created under [R.C. 307.514]. The total sums so deposited shall not exceed twelve hundred fifty dollars per annum, and when that amount has been deposited in the fund in accordance with this section then no further payments shall be required under this section in that calendar year from the clerks of those respective courts.

R.C. 307.515.

Finally, R.C. 307.515(D) requires the treasurer of the county or the treasurer of a municipal corporation to deposit a portion of fines, penalties, and forfeited bail moneys collected by any court in that county into the county law library resources fund as follows:

In each county, the treasurer of the county or the treasurer of the municipal corporation shall deposit monthly fifty per cent of all fines and penalties collected by, and fifty per cent of moneys arising from forfeited bail in, any court in that county for offenses brought for prosecution under [R.C. Chapters 4301 and 4303] and the state traffic laws in the county legal resources fund in that county that is created under [R.C. 307.514]. The sum so deposited in that fund by each treasurer shall not exceed twelve hundred dollars per annum under [R.C. Chapters 4301 and 4303], and when that amount has been deposited in that fund in accordance with this section, then no further deposits shall be required under this section in that calendar year from those treasurers.

As used in this section, “state traffic laws” does not include [R.C. 4513.263(B)].

At one time, the language comprising R.C. 307.515(A)-(D) appeared in four separate Revised Code sections—R.C. 3375.50, R.C. 3375.51, R.C. 3375.52, and R.C. 3375.53, respectively. Am. Sub.

H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008, with certain sections effective on other dates) (section 503, uncodified). *See generally* 2010 Op. Att’y Gen. No. 2010-014 (explaining amendments to the statutes creating county law libraries); 2010 Op. Att’y Gen. No. 2010-001 (same as prior parenthetical). Am. Sub. H.B. 420 consolidated the language of R.C. 3375.50-.53 into a single section, R.C. 307.515, but did not make substantive changes to the language governing the allocation of fine, penalty, and bail moneys collected by the various courts. *See generally* Ohio Legislative Service Comm’n, Final Analysis, Am. Sub. H.B. 420, 127th Gen. A. (explaining changes made by Am. Sub. H.B. 420 to R.C. 3375.50-.53).

You first ask whether, under R.C. 307.515, there is a \$7,000 cap on the total sum of state traffic law fines required to be deposited by the treasurer of a municipal corporation in the county law library resources fund. State traffic law fines are addressed specifically in R.C. 307.515(D). *See* 1989 Op. Att’y Gen. No. 89-103, at 2-499 n.6 (modified, in part, on other grounds by 1990 Op. Att’y Gen. No. 90-022) (“[c]learly, the Ohio Supreme Court is of the opinion that R.C. 3375.53 [now R.C. 307.515(D)] controls the disposition of all moneys collected for prosecutions arising under the state traffic laws” (citing *State ex rel. Bd. of Trs. Akron Law Library Ass’n v. Vogel*, 169 Ohio St. 243, 159 N.E.2d 220 (1959) (syllabus)); *see also State ex rel. Akron Law Library Ass’n v. Weil*, 16 Ohio App. 2d 151, 159-60, 242 N.E.2d 664 (Summit County 1968) (acknowledging court’s holding in *Vogel*). With respect to municipal corporations, R.C. 307.515(D) requires the treasurer of the municipal corporation to deposit fifty percent of fines, penalties, and forfeited bail moneys arising from offenses brought for prosecutions under the state traffic laws in the county law library resources fund. R.C. 307.515(D) does not impose a limit of \$7,000 upon deposits of state traffic law moneys by the treasurer of a municipal corporation to the county law library resources fund.

Division (A) of R.C. 307.515 imposes a \$7,000 limit on deposits made to the county law library resources fund by the clerk of a municipal court in any calendar year. As pertains to your question, deposits made by the clerk of a municipal court in any calendar year shall not exceed \$7,000 in counties, such as Wood County, with a population between 100,000 and 150,000.<sup>2</sup> R.C. 307.515(A)(3). The language does not refer to deposits made by the treasurer of a municipal corporation. Further, this limit applies to deposits made by the municipal court clerk for fines, penalties, and forfeited bail moneys arising “in[] a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances,

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<sup>2</sup> Division (A) of R.C. 307.515 states that the limits imposed apply to total amounts paid “under this section.” (Emphasis added.) We read “section,” as used in R.C. 307.515(A), to refer only to division (A) of R.C. 307.515. Typically the Revised Code uses the term “section” to include all parts within a section (e.g., “section R.C. 307.515” includes R.C. 307.515(A) through (D)), whereas the term “division” refers to a single subsection (e.g., R.C. 307.515(A)). Here, however, “section” was the term used in former R.C. 3375.50, the predecessor of R.C. 307.515(A). The language of former R.C. 3375.50 was not distributed among several divisions. The term “division” was not substituted for “section” when the four separate sections (R.C. 3375.50-.53) were consolidated into divisions (A) through (D) of R.C. 307.515.

where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state.” R.C. 307.515(A). The language of this provision does not refer to deposits for state traffic law moneys nor does it refer to R.C. 307.515(D). Accordingly, the \$7,000 calendar year limit in R.C. 307.515(A) does not apply to deposits of state traffic law moneys made pursuant to R.C. 307.515(D).

The Ohio Supreme Court reached the same conclusion when it considered R.C. 3375.50 and R.C. 3375.53, the prior versions of R.C. 307.515(A) and (D), respectively, in *State ex rel. Bd. of Trs. Akron Law Library Ass’n v. Vogel*, 169 Ohio St. at 247-49. The court ruled that the maximum amounts set out in R.C. 3375.50 (now R.C. 307.515(A)) did not apply to the deposits required by R.C. 3375.53 (now R.C. 307.515(D)). The court stated “it is clear that such maximum amounts cannot be construed to operate as blanket maximums so as to defeat the right of the library association to receive from the municipal treasurer the money to which it is entitled under [R.C. 3375.53].” *State ex rel. Bd. of Trs. Akron Law Library Ass’n v. Vogel*, 169 Ohio St. at 249. Although the statutes have been amended numerous times since the court’s decision in *Vogel*, the relevant language has not been revised in substance and thus the court’s decision in *Vogel* is still controlling. The language of R.C. 307.515(A), like the language of R.C. 3375.50 considered by the court in *Vogel*, applies only to moneys collected by a municipal clerk of court as required by that provision.

Accordingly, we conclude that no \$7,000 limit is imposed upon state traffic law moneys required to be deposited by R.C. 307.515(D) in a county law library resources fund by the treasurer of a municipal corporation.

If R.C. 307.515 does not impose a \$7,000 limit on the total sum of state traffic law fines to be deposited by the treasurer of a municipal corporation in the county law library resources fund, you also ask whether the treasurer of a municipal corporation should pay amounts withheld by the municipal corporation in excess of \$7,000. We understand your question to ask whether the treasurer of a municipal corporation should deposit moneys in the county law library resources fund that the treasurer failed to deposit as required by R.C. 307.515(D), *i.e.*, state traffic law moneys that exceed \$7,000. R.C. 307.515 does not address this question. Nor are we aware of any statute that specifically requires the treasurer of a municipal corporation to deposit funds in the county law library resources fund that the treasurer failed to deposit as required by R.C. 307.515.

Nonetheless, it is our opinion that the treasurer of a municipal corporation should deposit all moneys in the county law library resources fund as required by R.C. 307.515(D), including amounts that previously have been withheld from deposit. R.C. 307.515(D) obligates the treasurer of a municipal corporation to deposit in the county law library resources fund fifty percent of fines, penalties, and forfeited bail moneys arising from offenses brought for prosecution under the state traffic laws. If the treasurer of a municipal corporation deposits less than fifty percent of state traffic law moneys in the county law library resources fund, he has not complied with the statutory requirement set forth in R.C. 307.515(D). Additionally, moneys in excess of \$7,000 collected by the municipal court for the prosecution of state traffic law offenses, up to a maximum of fifty percent of such moneys, are allocated by R.C. 307.515(D) for deposit in the county law library resources fund and remain due to the county library resources fund until they have been deposited into that fund.

Accordingly, the treasurer of a municipal corporation should deposit in the county law library resources fund any moneys that he has failed to deposit as required by R.C. 307.515(D).

Furthermore, by depositing moneys in the county law library resources fund that he failed to deposit as required by R.C. 307.515(D), the treasurer may avoid being named a defendant in an action in mandamus. A county law library resources board may elect to file a petition for a writ of mandamus to compel the treasurer of a municipal corporation to deposit moneys in the county law library resources fund that the treasurer has failed to deposit as required by R.C. 307.515(D). In *State ex rel. Dayton Law Library Ass'n v. White*, 110 Ohio St. 3d 335, 2006-Ohio-4573, 853 N.E.2d 651, at ¶¶15-16, 39, the Ohio Supreme Court affirmed the lower court's decision granting a writ of mandamus to a county law library association and to the county in which the law library was located. The writ directed a municipal court clerk to pay fine money that the clerk had withheld to the county.<sup>3</sup> *Id.* at ¶¶15-16. There, the clerk of the Kettering Municipal Court was billing Montgomery County for court costs for unsuccessful state law prosecutions in that court. *Id.* at ¶¶4-5. Montgomery County refused to pay those costs. *Id.* at ¶5. The clerk then started subtracting amounts due for the court costs the county refused to pay from fine moneys collected by the court and owed to the county. *Id.* In the span of several years, the clerk deducted \$478,954.21 for court costs incurred in unsuccessful state law prosecutions from amounts the court owed to the county. *Id.* at ¶10. A percentage of the money for fines and penalties for violations of liquor control and state traffic laws was for the benefit of the county law library association pursuant to R.C. 3375.53, the predecessor of R.C. 307.515(D). *Id.* at ¶11. The law library association, however, "began receiving an amount less than the sum to which it was statutorily entitled because of the Kettering Municipal Court Clerk's deductions in the clerk's payment to Montgomery County." *Id.*

The court of appeals granted a writ of mandamus to the county law library association and the county directing the municipal court clerk to pay to the county "the fine money that had been withheld as an offset against unpaid costs incurred in connection with unsuccessful state-law prosecutions." *Id.* at ¶15. The court of appeals found that the clerk owed the county, for the partial benefit of the county law library association, all of the moneys that the clerk had withheld plus post-judgment interest and costs. *Id.* at ¶16. The Ohio Supreme Court affirmed the court of appeals decision. The court concluded that the municipal court clerk was not entitled to offset the municipal court's payments due the county by the amount of costs incurred in connection with unsuccessful state law prosecutions in

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<sup>3</sup> *State ex rel. Dayton Law Library Ass'n v. White*, 110 Ohio St. 3d 335, 2006-Ohio-4573, 853 N.E.2d 651, was decided prior to the legislative amendments that created the county law library resources board and the county law library resources fund. Therefore, the court's opinion refers to the county law library association, predecessor of the county law library resources board, and under the prior law moneys were paid to the county to benefit the county law library rather than to the county law library resources fund. See Am. Sub. H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008, with certain sections effective on other dates) (section 503, uncodified). See generally 2010 Op. Att'y Gen. No. 2010-014; 2010 Op. Att'y Gen. No. 2010-001.

municipal court. *Id.* at ¶39. Based on that conclusion, the court held that the county law library association and the county were entitled to a writ of mandamus. *Id.*

Additionally, a county prosecuting attorney may file a civil action to recover moneys that have been illegally withheld from the county treasury pursuant to R.C. 309.12.<sup>4</sup> *See generally* 2012 Op. Att’y Gen. No. 2012-010, at 2-73 to 2-74 and 2-77 to 2-78 (discussing the requirements of R.C. 309.12 and explaining that the decision of whether to file a civil action is at the discretion of the county prosecuting attorney); 1992 Op. Att’y Gen. No. 92-038, at 2-150. It is our opinion that the treasurer of a municipal corporation that has withheld moneys in excess of \$7,000 that are collected by the municipal court and allocated to the county law library resources fund pursuant to R.C. 307.515(D) should deposit those moneys in the county law library resources fund as required by R.C. 307.515(D), including amounts previously withheld, in order to avoid being named as a defendant in a civil action by the county prosecuting attorney pursuant to R.C. 309.12.

For the reasons discussed above, it is my opinion, and you are hereby advised that R.C. 307.515 does not impose a \$7,000 limit upon deposits in a county law library resources fund by the treasurer of a municipal corporation for state traffic law moneys collected by a municipal court.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Dewine".

MICHAEL DEWINE  
Ohio Attorney General

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<sup>4</sup> A county law library resources board is a county board for purposes of R.C. 309.09 and is entitled to representation by the county prosecuting attorney. 2009 Op. Att’y Gen. No. 2009-049, at 2-370 n.5.