

OPINION NO. 80-099**Syllabus:**

1. The cost of preparing transcripts for indigent defendants in felony cases is to be treated as part of the overall cost of providing such indigents with local level legal representation pursuant to the Ohio Public Defender Commission Act. Under the Act, the counties must initially bear the cost of such legal services, but the state is required to reimburse the counties for fifty percent of the total cost, subject to the limitation that in cases where an indigent is provided with legal representation through a public defender's officer or a county appointed counsel system, the total amount of reimbursement shall not exceed the amount appropriated for the fiscal year by the General Assembly for that purpose. (1968 Op. Att'y Gen. No. 68-098 overruled to the extent that it is inconsistent with this conclusion.)
2. Where an indigent is represented in a felony case by a county or joint county public defender, transcript costs are to be included in the public defender commission's annual report to the county commissioners, who may then certify the report to the state public defender for fifty percent reimbursement. Where an indigent is represented in a felony case by assigned counsel other than a public defender, under a county appointed counsel system or otherwise, the costs of transcripts are to be included in the county auditor's report to the county commissioners, who may then certify the report to the state public defender for fifty percent reimbursement.
3. Common pleas court reporters and assistant court reporters may collect the compensation provided for in R.C. 2301.24 and R.C. 2301.25 for preparing transcripts for indigent criminal defendants, in addition to their regular salary which is fixed by the court pursuant to R.C. 2301.19 and 2301.22.

4. Pursuant to R.C. 2941.51, the county is liable for the cost of providing an indigent defendant charged with a felony with a transcript of a probable cause hearing in municipal court where the transcript is ordered by counsel assigned to the case under R.C. 120.16(E), under R.C. 120.26(E), or otherwise, if the cost is approved by the court. The court may bill the county for such costs by certifying a statement of the charges from the court reporter and issuing a voucher to the county auditor. The county may then seek reimbursement from the state for fifty percent of the cost of such transcripts.

5. A letter from the administrative judge of a common pleas court to the board of county commissioners explaining the need for additional funds to pay for transcripts for indigent defendants constitutes a valid request for an amended or supplemental appropriation under R.C. 5705.40. Whether such a request must be honored, however, depends on whether the money requested is reasonably necessary for the court's operation, a determination which is to be made by the board of county commissioners.

To: Richard G. Ward, Ross County Prosecuting Attorney, Chillicothe, Ohio
By: William J. Brown, Attorney General, December 31, 1980

I have before me your request for my opinion which raises the following questions with respect to the costs of transcripts prepared for indigent criminal defendants:

1. Whether or not the conclusion reached in 1968 OAG 098, that the State of Ohio will pay the costs of a transcript for an indigent defendant, is still valid in view of the enactment of Chapter 120 Revised Code providing for counsel and in view of the changes in Section 2953.03, Revised Code?
2. If the state shall pay the costs of the preparation of such a transcript, in what manner should the itemized costs bill be presented to what appropriate state office for reimbursement?
3. Whether or not the official Common Pleas Court Reporter and assistants are permitted to collect additional compensation over and above the salaries fixed by the Court for the preparation of transcripts requested in cases before the Common Pleas Court?
4. Whether or not the costs of preparation of transcripts of probable cause hearings in Municipal Court ordered by Court-appointed defense counsel may be billed to the county pursuant to Section 2941.51, Revised Code, by issuing a certificate for a "Court reporter's fee" in favor of the Court reporter preparing the transcript? If the county treasury is liable for such costs, may the same be reimbursed as costs in a felony case by the State of Ohio to the county?
5. Whether or not a letter from the Administrative Common Pleas Court Judge, containing an explanation of the need for an additional county appropriation to pay for indigent defendants' appeals transcripts and requesting that a certain amount be appropriated for the current fiscal year sometime after all appropriations have been made, constitutes a valid request for an amended or supplemental appropriation under Section 5705.40, Revised Code (letters enclosed)?

Your first question concerns whether the conclusion reached by one of my predecessors in 1968 Op. Atty Gen. No. 68-098, that the state must fully reimburse counties for the cost of providing indigents with transcripts in felony cases, is still valid in view of subsequent statutory changes. This question may be answered by analyzing the reasoning behind Op. No. 68-098 and the effect of certain statutory changes.

The conclusion reached in Op. No. 68-098 was based on a reading of R.C. 2949.19 in conjunction with R.C. 2953.03. R.C. 2949.19 provided:

Upon the return of the writ against a convict issued under section 2949.15 of the Revised Code, if an amount of money has not been made sufficient for the payment of costs of conviction and no additional property is found whereon to levy, the clerk of the court of common pleas shall so certify to the auditor of state, under the seal of the court, with a statement of the total amount of costs, the amount paid, and the amount remaining unpaid. . . . Such unpaid amount as the auditor of state finds to be correct shall be paid by the state to the order of such clerk.

R.C. 2953.03, at that time, provided:

The judge of the trial court in a felony case may, because of the poverty of the defendant, in the interest of justice, order the bill of exceptions and transcript, or either, paid from the county treasury in the manner provided in section 2301.24 of the Revised Code, and order the amount in money so paid charged as costs in the case. (Emphasis added.)

Because transcripts furnished indigents in felony cases were designated as costs by R.C. 2953.03, my predecessor reasoned that such expenses were fully reimbursable by the state under R.C. 2949.19 as a "cost of conviction" which could not be recovered from the defendant.

As you appropriately noted in your request, however, changes have since been made in R.C. 2953.03, and R.C. Chapter 120, establishing the Ohio Public Defender Commission, has been enacted. The continuing validity of the conclusion reached in Op. No. 68-098 must therefore be assessed in light of those statutory changes.

As amended by Am. Sub. H.B. 164, 111th Gen. A. (1976) (eff. Jan. 13, 1976) (Ohio Public Defender Commission Act), the Revised Code no longer makes any specific references to the treatment of and manner of payment for transcripts provided to indigents. Prior to 1976, R.C. 2953.03, as set forth above, permitted the trial judge in felony cases to order that a transcript furnished to an indigent defendant "be paid from the county treasury" and "charged as costs." A similar provision was also found in R.C. 2301.24, which in pertinent part read:

The trial judge may, during trial, in the exercise of sound discretion, and in the interest of justice, and where there are reasonable grounds for the request, order a transcript of the testimony of one or more witnesses on behalf of an indigent defendant in a criminal case, the expense of which shall be paid by the county treasury and taxed as costs. (Emphasis added.)

These provisions were repealed by the Ohio Public Defender Commission Act.

Even in the absence of these statutory mandates, an indigent criminal defendant is still entitled to a transcript at public expense as a matter of constitutional right, where it is needed for an effective defense or appeal. Britt v. North Carolina, 404 U.S. 229 (1971); Ohio v. Arrington, 42 Ohio St. 2d 114, 326 N.E.2d 651 (1975). Furthermore, Ohio R. Crim. P. 32(A)(2) mandates that, "[a]fter imposing sentence in a serious offense which has gone to trial on a plea of not

guilty, the court shall advise the defendant that: . . .(d) if he is unable to pay the costs of documents necessary to an appeal, such documents will be provided without cost. . . ."

While it is clear that an indigent criminal defendant must be provided with a transcript at public expense in certain cases, it is no longer entirely clear how such transcripts are to be paid for since all specific references to payment for transcripts for indigents have been deleted from the Code. Under the present statutory framework, the method of paying for such transcripts is subject to two possible approaches. Under the first approach, the cost of furnishing indigents with transcripts still would be treated as costs in the case. Although Am. Sub. H.B. 164 deleted the provisions in R.C. 2953.03 and R.C. 2301.24 which specified that transcripts for indigents were to be taxed as costs, R.C. 2301.25 still specifies that the costs of transcripts requested by defendants, in general, are to be taxed as costs.

R.C. 2301.25 in pertinent part provides:

When ordered by the prosecuting attorney or the defendant in a criminal trial, or when ordered by a judge of the court of common pleas for his use, in either civil or criminal cases, the costs of transcripts mentioned in section 2301.23 of the Revised Code, shall be taxed as costs in the case. . . . (Emphasis added.)

Using the same reasoning employed in Op. No. 68-098, one may argue that the expenses involved in providing indigents with transcripts in felony cases constitute costs under R.C. 2301.25, which should ultimately be borne by the state under the mandate of R.C. 2949.19.

The second possible approach to handling the payment for transcripts provided to indigents would be to treat the transcript costs as part of the cost of providing indigents with legal representation pursuant to the Ohio Public Defender Commission Act. Under the Act, each county may establish a county public defender system, join a joint county public defender system, or establish a court appointed counsel system. R.C. 120.13; R.C. 120.23; R.C. 120.33. Where an indigent is provided with local level legal representation under one of these systems, the Act requires that the cost of providing such services be paid for by the county except under a court appointed counsel system where the indigent is charged with violation of an ordinance of a municipal corporation that has not contracted with the county commissioner for payment of appointed counsel.¹ The county may then seek reimbursement from the state for fifty percent of the "total cost" of the system. R.C. 120.18; R.C. 120.28; R.C. 120.33. However, the total amount of money which may be reimbursed in any fiscal year pursuant to these provisions is limited to the amount appropriated for the fiscal year by the General Assembly for that

¹Pursuant to R.C. 120.33, a county with a county appointed counsel system may enter into a contract with a municipal corporation "under which the municipal corporation shall reimburse the county for counsel appointed to represent indigent persons charged with violations of the ordinances of the municipal corporation." If there is no such contract, a county has no duty to pay for counsel appointed to represent an indigent accused of violation of a municipal ordinance.

Since your first question is concerned only with the continuing validity of Op. No. 68-098, which deals solely with state reimbursement for costs in felony cases, I am not attempting to discuss how the expenses of representing an indigent charged with the violation of a municipal ordinance are to be handled.

purpose. When funds are insufficient to pay fifty percent of the total cost in a fiscal year, the state is required to proportionately reduce the amount reimbursed to each county. R.C. 120.34. In addition, the Act provides for payment by the county of the fees and expenses of counsel otherwise assigned to represent an indigent defendant, except in cases where the defendant is charged with a violation of a municipal ordinance. The county may also obtain reimbursement from the state for fifty percent of these costs. R.C. 2941.51.

Under the Ohio Public Defender Commission Act, the cost of procuring a transcript could be construed as a "cost" of operating a public defender's office or as an "expense" of assigned counsel. While these terms are not defined by the Act, it is a well-settled principle of statutory construction that in the absence of any statutory definition, terms will be given their plain and ordinary meaning. See, e.g., Lake City National Bank v. Kosydar, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1975); R.C. 1.65. As a matter of common usage, the cost of procuring a transcript is thought of as an expense of counsel. Although Ohio courts have never specifically construed these terms, other jurisdictions with similar statutes, permitting court appointed counsel to receive reimbursement for expenses incurred in representing indigents, have construed such expenses to include the cost of transcripts. State v. Horton, 34 N.J. 518, 170 A.2d (1961); People ex rel. Levy v. Grout, 37 Misc. 430, 75 N.Y.S. 290 (1902); Annot., 18 A.L.R. 3d 1074 (1968). That the legislature intended the cost of transcripts to be treated as part of the cost of operating a public defender system is supported by the fact that R.C. Chapter 120 grants public defenders the authority to order transcripts; the power to order transcripts necessarily implies the power to incur the expense of procuring them. R.C. 120.04(C)(1); R.C. 120.15(C); R.C. 120.25(C).

This second method of handling the payment for transcripts furnished indigents appears to be more consistent with legislative intent. In enacting Am. Sub. H.B. 164, the General Assembly specifically established the Ohio Public Defender Commission to "provide, supervise, and coordinate legal representation at state expense for indigent and other persons." R.C. 120.01. This purposive language, read in tandem with the fact that the Act deleted all specific references to payment for transcripts for indigents, evidences a legislative intent to give uniform treatment to all expenses incurred in providing indigents with legal representation. To construe the transcript expense as a "cost" under 2301.25, rather than part of the expense of representing a criminal indigent defendant pursuant to Ohio Public Defender Commission Act, would result in treating transcript expenses significantly differently than other representation expenses. As a "cost" reimbursable under R.C. 2949.19, transcript expenses would be reimbursable by the state only in felony cases where a conviction was obtained. 1978 Op. Att'y Gen. No. 78-004. In contrast, under the Ohio Public Defender Commission Act, all other expenses of representing an indigent in a felony case would be fifty percent reimbursable by the state regardless of the outcome of the trial.

That the General Assembly intended that transcript costs be reimbursed as an expense of representing an indigent, rather than as part of the cost bill, is further evidenced by the changes that were made in R.C. 2301.24 pursuant to Am. Sub. H.B. 164. In amending that section, the General Assembly repealed language which designated the expense of a transcript provided to an indigent as a cost, while retaining a provision which designated the expense of transcripts requested by the prosecutor or the trial judge as a cost. Where one or more sections of a statute are repealed and re-enacted in a different form, a presumption arises that the legislature intended some change in the effect and operation of the law. Board of Education v. Board of Education, 112 Ohio St. 108, 146 N.E. 812 (1925); Abbey v. National Cash Register Co., 49 Ohio Misc. 19, 359 N.E.2d 1028 (1974); In re McGraff's Estate, 38 Ohio Op. 187, 83 N.E.2d 427 (1948). Thus, by deleting the one part of R.C. 2301.24, while retaining the other, the General Assembly indicated its intent that a different result should obtain where a transcript is requested by an indigent. The cost of transcripts requested by indigents should, therefore, be treated as an expense of representing an indigent rather than as part of the cost bill.

The seemingly contradictory language in R.C. 2301.25, designating transcripts requested by defendants as costs in the case, does not preclude this result. The longstanding rule of statutory construction that a special law operates as an exception to an earlier general law, to the extent of an irreconcilable conflict, is applicable here. State ex rel. Crabbe v. City of Cleveland, 115 Ohio St. 484, 154 N.E. 738 (1926); Thomas v. Evans 73 Ohio St. 140, 76 N.E. 862 (1905). This rule of statutory construction is codified in R.C. 1.51, which provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

A special statute is one which covers a particular purpose and subject matter. See, e.g., Leach v. Collins, 123 Ohio St. 530, 176 N.E. 77 (1931). The Ohio Public Defender Commission Act is a special statute in the sense that it deals exclusively with providing and paying for legal representation of indigent defendants. In contrast, although R.C. 2301.24 deals with only one particular expense of legal representation, transcripts, it applies to defendants in general. Therefore, the general provision of R.C. 2301.24, that the expense of transcripts requested by defendants in general is to be treated as a cost, must yield to the provisions of the Ohio Public Defender Commission Act dealing with the payment of the expenses of representing indigent defendants in particular.

Alternatively, it could be argued that the General Assembly specifically intended to except the expense of indigent transcripts from R.C. 2301.25 by expressly stating under the Ohio Public Defender Commission Act that expenses incurred in representing indigents are not costs. Where an indigent defendant is provided with legal representation under a county appointed counsel system, R.C. 120.33 provides: "The fees and expenses approved by the court shall not be taxed as part of costs and shall be paid by the county." A nearly identical provision is also found in R.C. 2941.51(C), which provides for payment of counsel otherwise assigned by the court to represent an indigent.

Accordingly, in specific response to your first question, it is my opinion that the conclusion reached in 1968 Op. Atty Gen. No. 68-098—that the state, pursuant to R.C. 2949.19, must fully reimburse counties for the costs of transcripts provided to indigent defendants in felony cases—is no longer valid in light of statutory changes brought about by Am. Sub. H.B. 164, the Ohio Public Defender Commission Act. Instead, the costs of preparing transcripts for indigent defendants in felony cases are to be treated as part of the overall cost of providing such indigents with legal representation pursuant to the Ohio Public Defender Commission Act. The cost of providing legal services in such cases must initially be paid by the counties, but the state is required to reimburse counties for fifty percent of the total cost, subject to the limitation that in cases where an indigent is provided with legal representation through a public defender's office or a county appointed counsel system, the total amount of reimbursement shall not exceed the amount appropriated for the fiscal year by the General Assembly for that purpose. Op. No. 68-098 is overruled to the extent that it is inconsistent with this conclusion.

Once it is concluded that the costs of preparing such transcripts are reimbursable by the state in accordance with the Ohio Public Defender Commission Act rather than R.C. 2949.19, your second question concerning the manner of obtaining reimbursement may be answered by reference to the Act. Under the Act, the precise procedure for seeking reimbursement depends on the manner in which an indigent is provided with local level legal representation. Since my answer to your first question is limited to state reimbursement for costs in felony cases, I am so limiting my answer to your second question, and am not here discussing reimbursement for costs in cases involving municipal ordinances.

If an indigent is represented by a county public defender in a felony case, transcript costs are to be included in an annual report by the county public defender commission to the county commissioners, along with other operational costs. R.C. 120.14(C)(2). The reimbursement process then works as follows: "The county public defender commission's report to the county commissioners shall be audited by the county auditor. The county commissioners, after review and approval of the audited report, may then certify it to the state public defender for reimbursement." R.C. 120.18(A). Similarly, if an indigent is represented by a joint county public defender, transcript costs are to be included in an annual report by the commission to the joint board of county commissioners. R.C. 120.24(C)(2). The reimbursement process for these costs is outlined in R.C. 120.28(A) and is virtually identical to that found in R.C. 120.18(A), as set forth above.

If an indigent charged with a felony is provided with legal representation under a county appointed counsel system, the fees and expenses of counsel, including transcript costs, must be approved by the court and then certified by the court to the county auditor for payment by the county. R.C. 120.33(D). Reimbursement may then be sought in the following manner, as set forth in R.C. 120.33(D):

The county auditor shall report periodically, but not less than annually, to the board of county commissioners the amounts paid out pursuant to the approval of the court. The county commissioners, after review and approval of the auditor's report, may then certify it to the state public defender for reimbursement.

Finally, where counsel is otherwise assigned to represent an indigent charged with a felony, transcript costs are reimbursable along with other expenses of counsel in accordance with the procedure outlined in R.C. 2941.51. As under a county appointed counsel system, all counsel expenses must be approved by the court and certified by the court to the county auditor for payment. R.C. 2941.51 then goes on to establish the same procedure as in R.C. 120.33(D) for seeking reimbursement from the state.

In your third question, you inquire whether a common pleas court reporter or assistant court reporter may collect additional compensation for the preparation of transcripts for indigent criminal defendants. The regular salary for a court reporter is provided for in R.C. 2301.22, which in pertinent part reads as follows:

Each shorthand reporter shall receive such compensation as the court of common pleas making the appointment fixes. Such compensation shall be in place of all per diem compensation in such court. In case such appointment is for a term of less than one year, such court may allow a per diem compensation to be fixed by the court, plus actual and necessary expenses incurred for each day such shorthand reporter is actually engaged in taking testimony or performing other duties under the orders of such court, which allowance shall be in full for all services so rendered.

R.C. 2301.19 provides that assistant court reporters may be paid at the same rate and in the same manner as the official court reporter.

Additional compensation for the preparation of transcripts and copies of common pleas court proceedings is authorized by R.C. 2301.24 and R.C. 2301.25. R.C. 2301.24 provides:

The compensation of shorthand reporters for making transcripts and copies as provided in section 2301.23 of the Revised Code shall be fixed by the judges of the court of common pleas of the county wherein the trial is had. Such compensation shall be paid forthwith by the party for whose benefit a transcript is made. The compensation for transcripts of testimony requested by the

prosecuting attorney during trial in criminal cases or by the trial judge, in either civil or criminal cases, and copies of decisions and charges furnished by direction of the court shall be paid from the county treasury, and taxed and collected as costs.

R.C. 2301.25 provides in pertinent part:

When more than one transcript of the same testimony or proceedings is ordered at the same time by the same party, or by the court, the compensation for making such additional transcript shall be one-half the compensation allowed for the first copy, and shall be paid for in the same manner except that where ordered by the same party only the cost of the original shall be taxed as costs.

It is well settled that the compensation provided for in R.C. 2301.24 and R.C. 2301.25, for the preparation of transcripts by court reporters, is in addition to the compensation allowed such reporters under R.C. 2301.22. 1965 Op. Att'y Gen. No. 65-191, p. 2-423; 1954 Op. Att'y Gen. No. 3645, p. 145. I can see no basis for denying a court reporter that additional compensation where a transcript is prepared for an indigent defendant. In my opinion, the fact that a criminal defendant who requests a transcript is indigent affects only who must ultimately bear the cost of the transcript, as discussed supra, not whether the court reporter is entitled to additional compensation.

Your fourth question concerns how the cost of providing an indigent defendant with a transcript of a probable cause hearing in municipal court is to be handled where the transcript is ordered by court-appointed defense counsel. Once again, since your question suggests that you are concerned only with transcript costs in felony cases, I am so limiting my answer to this question. Thus, my answer does not address the issue of how transcript costs in cases involving violations of municipal ordinances are to be handled.² Furthermore, because your question refers to R.C. 2941.51, I am assuming that by "court appointed defense counsel" you mean assigned counsel other than a public defender or counsel assigned under a "county appointed counsel system." Since such transcript costs are to be treated as an expense of counsel, R.C. 2941.51(C) requires that such an expense in a felony case be paid initially by the county, if the expense has been approved by the court, except in the cases where the defendant is charged with a violation of a municipal ordinance. The statute does not indicate when such an expense must be approved. However, constitutional principals mandate that a transcript of a prior proceeding be provided to an indigent criminal defendant where it is needed for an effective appeal or defense. Britt v. North Carolina, 404 U.S. 229 (1971); Ohio v. Arrington, 42 Ohio St. 114, 326 N.E.2d 651 (1975).

In the context of your fourth question, you specifically inquire whether an appropriate method of billing the county pursuant to R.C. 2941.51 would be to issue a certificate for a "Court reporter's fee" in favor of the court reporter. There is no detailed procedure set forth in R.C. 2941.51 for billing the county for court-approved expenses. The statute merely requires that the expenses be "certified by the court to the auditor" who may then "draw his order on the county treasurer." Nor is there any specific procedure outlined in R.C. Chapter 1901, which deals with municipal courts, for payment for transcripts prepared by municipal court reporters. However, with respect to transcripts prepared by a common pleas court reporter for a judge, one of my predecessors concluded that the proper billing procedure is as follows:

²It should be kept in mind, however, that the fees and expenses of counsel assigned to represent an indigent charged with a violation of a municipal ordinance are specifically excluded from the assigned counsel payment provisions under R.C. 2941.51(C) of the Ohio Public Defender Commission Act.

Upon completion of a transcript of a proceeding which was made at the request of the Judge of the Common Pleas Court, the court reporter should issue a statement of the charges to the clerk of the common pleas court, who should certify the statement and issue a voucher to the county auditor, who shall issue warrants on the county treasurer for the payment of such compensation.

1965 Op. Att'y Gen. No. 191, p. 2-522. Where no practice or procedure for a criminal case in municipal court is specified in R.C. Chapter 1901 or R.C. Chapters 1907 to 1923, the practice or procedure provided in the court of common pleas applies. City of Lakewood v. Stump, 26 Ohio App. 2d 119, 269 N.E.2d 611 (1971); see R.C. 1901.21(A); R.C. 1907.371. Since the source of compensation for a transcript prepared for an indigent defendant in a case covered by R.C. 2941.51 is the county treasury, and since there is no specific procedure designated in R.C. Chapter 1901 by which municipal court reporters are to be paid for making transcripts, I am of the opinion that the procedure outlined in 1965 Op. No. 191 for billing the county would also be appropriate with respect to transcripts prepared by municipal court reporters for indigent criminal defendants in cases under R.C. 2941.51. Furthermore, this procedure would be consistent with the requirements of R.C. 2941.51. If in your question by "certificate for a court reporter's fee" you mean a certified statement of the charges for the transcript, the method of billing you suggest would be in conformity with this procedure and would therefore be acceptable.

You also inquired in your fourth question whether the counties may be reimbursed by the state for the cost of such municipal court transcripts. As discussed in the context of answering your first question, a county is entitled to be reimbursed by the state for fifty percent of the costs of transcripts paid for by the county pursuant to R.C. 2941.51. Amounts paid out under that section are not to be taxed as costs and therefore not fully reimbursable by the state under R.C. 2949.19 as a "cost of conviction."

Your final question concerns whether a letter from the administrative common pleas judge constitutes a valid request for an amended or supplemental appropriation under R.C. 5705.40. That provision does not specify any particular form in which such a request is to be made, but mandates only that "such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation."

The making of original appropriations for courts of common pleas is governed by R.C. 307.01(R). Since R.C. 5705.40 requires that an amended or supplemental appropriation be made in compliance with the same requirements which govern making the original appropriation, a request for additional funds for a common pleas court must comply with the requirements of R.C. 307.01(B). R.C. 307.01(B) requires only that an appropriation request from the court of common pleas be submitted in writing to the board of county commissioners and "set forth estimated administrative expenses of the court that the court considers reasonably necessary for its operation." The letter from the Administrative Judge of the Ross County Court of Common Pleas requesting an additional appropriation, which you enclosed with your letter, appears to comport with these requirements. The fact that a request has been properly submitted, however, does not necessarily mean that it must be honored.

R.C. 307.01(B) requires that, in determining whether to honor a request, the board of county commissioners conduct a public hearing. After conducting the public hearing and considering the written request, the statute mandates that the board appropriate the amount of money that "it determines. . . is reasonably necessary to meet all administrative expenses of the court." Because R.C. 5705.40 requires that a supplemental appropriation be made in conformity with the laws governing the original appropriation, the board would be required to follow these procedures in considering the supplemental appropriation which you have inquired about. Whether such a supplemental appropriation must be approved because it is "reasonably necessary to meet all administrative expenses of the court" is left to

the board's determination, but that determination may be appealed to the courts pursuant to R.C. 307.01, if the court considers the appropriation made to be insufficient.

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

1. The costs of preparing transcripts for indigent defendants in felony cases is to be treated as part of the overall cost of providing such indigents with local level legal representation pursuant to the Ohio Public Defender Commission Act. Under the Act, the counties must initially bear the cost of such legal services, but the state is required to reimburse the counties for fifty percent of the total cost, subject to the limitation that in cases where an indigent is provided with legal representation through a public defender's office or a county appointed counsel system, the total amount of reimbursement shall not exceed the amount appropriated for the fiscal year by the General Assembly for that purpose. (1968 Op. Att'y Gen. No. 68-098 overruled to the extent that it is inconsistent with this conclusion.)
2. Where an indigent is represented in a felony case by a county or joint county public defender, transcript costs are to be included in the public defender commission's annual report to the county commissioners, who may then certify the report to the state public defender for fifty percent reimbursement. Where an indigent is represented in a felony case by assigned counsel other than a public defender, under a county appointed counsel system or otherwise, the costs of transcripts are to be included in the county auditor's report to the county commissioners, who may then certify the report to the state public defender for reimbursement.
3. Common pleas court reporters and assistant court reporters may collect the compensation provided for in R.C. 2301.24 and R.C. 2301.25 for preparing transcripts for indigent criminal defendants, in addition to their regular salary which is fixed by the court pursuant to R.C. 2301.19 and 2301.22.
4. Pursuant to R.C. 2941.51, the county is liable for the cost of providing an indigent defendant charged with a felony with a transcript of a probable cause hearing in municipal court where the transcript is ordered by counsel assigned to the case under R.C. 120.16(E), under R.C. 120.26(E), or otherwise, if the cost is approved by the court. The court may bill the county for such costs by certifying a statement of the charges from the court reporter and issuing a voucher to the county auditor. The county may then seek reimbursement from the state for fifty percent of the cost of such transcripts.
5. A letter from the administrative judge of a common pleas court to the board of county commissioners explaining the need for additional funds to pay for transcripts for indigent defendants constitutes a valid request for an amended or supplemental appropriation under R.C. 5705.40. Whether such a request must be honored, however, depends on whether the money requested is reasonably necessary for the court's operation, a determination which is to be made by the board of county commissioners.