

OPINION NO. 81-057**Syllabus:**

1. In reporting its financial transactions to the Auditor of State, the Ohio Department of Transportation is required to follow the forms for reporting established in directives of the Department of Administrative Services and prescribed by the Auditor. However, ODOT is not required to follow any form prescribed by the Auditor if the use thereof is not required for reporting

purposes or if the completion of such form would either require acts not in conformity with law or prevent action otherwise permissible.

2. Where ODOT has not obtained ODAS permission to make its own purchases, ODOT is required to follow purchasing procedures established in ODAS directives and prescribed by the Auditor. However, where, by issuance of a release and permit, ODOT has obtained ODAS permission to make its own purchases, ODOT is not required to follow such procedures.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, September 23, 1981

I have before me your request for my opinion on a question involving the Ohio Department of Transportation (ODOT) and the Auditor of State. You have indicated in our discussion and correspondence that your question is whether ODOT, in reporting its financial transactions to the Auditor of State and in obtaining its various purchases, is required to follow the forms and procedures established in directives of the Ohio Department of Administrative Services (ODAS) and prescribed by the Auditor of State. The question arises as a result of a conflict between the State Auditor's Office and ODOT, involving the forms and procedures ODOT is required to use for purchasing. You mention specifically the applicability to ODOT of the forms and procedures found in ODAS Directive 80-19¹ and prescribed by the Auditor for use by the various state departments and agencies. To facilitate our discussion, I will initially address the question of which forms are to be followed and then the question of which procedures ODOT is required to follow.

The two statutes of primary relevance to your question concerning which forms are to be followed are R.C. 5501.15 and 117.05. R.C. 5501.15 requires the Director of ODOT to appoint an auditor for the Department. R.C. 5501.15 reads, in pertinent part, as follows:

The director of transportation shall appoint an auditor who shall examine into and supervise the methods of bookkeeping and accounting of the department of transportation and all similar matters relating to its management. The auditor shall prescribe methods of accounting for the department, and the accounting force of the department shall be under his direction. The auditor shall devise and install in the department an adequate bookkeeping system, and the accounts of the department shall be so kept that they at all times clearly and plainly exhibit the several appropriations available for the use of the department, the specific amounts of each such appropriation set aside or apportioned by the department for each improvement or purpose, the apportionment or division of all such appropriations among the several counties of the state where such apportionment or division is so made, the amount or portion of each such apportionment against which contractual liabilities have been created, and the amount expended and still to be expended in connection with each contractual obligation of the department. The auditor shall establish a system in the department that will afford a complete check against the improper payment of any bills from the funds of the department, and equally provide for the prompt payment

¹ODAS Directive 80-19 was cancelled by Directive 82-01, effective September 1, 1981. ODAS Directive 82-22, effective September 1, 1981, sets forth the current purchasing laws and policies of the Department of Administrative Services, Division of Office Services, State Purchasing.

of the just obligations of the department. The auditor shall act under the general supervision and control of and perform such other similar duties as are designated by the director. He shall give a bond in the sum of ten thousand dollars. (Emphasis added.)

R.C. 5501.15 directs the auditor of ODOT to establish a system of accounting and sets forth specifically those items which must be clearly identified within the accounts of the system. It does not, however, make any reference to the form of documents which would be used to separate and verify transactions for the purpose of reporting to the Bureau of Inspection and Supervision of Public Offices pursuant to R.C. 117.06, and which would be kept as records independent of the accounts.

The final paragraph of R.C. 5501.15 provides that the specific authority granted to ODOT's auditor is not unrestricted. That paragraph of R.C. 5501.15 provides as follows: "The powers and duties conferred by this section shall be subject to such control as is conferred by law upon any department of the state government with respect to the financial transactions of the departments, offices and institutions of the state government."

R.C. 117.05(A) confers upon the Auditor of State the responsibility of establishing a uniform system of accounting and reporting for certain public offices, including, by virtue of R.C. 117.01, the Department of Transportation. R.C. 117.05(A) reads as follows:

The chief inspector and supervisor of public offices shall prescribe and require the installation of a system of accounting and reporting for the public offices named in section 117.01 of the Revised Code. Such system shall be uniform in its application to offices of the same grade and accounts of the same class, and shall prescribe the form of receipt, vouchers, and documents required to separate and verify each transaction, and forms of reports and statements required for the administration of such offices or for the information of the public.

Such system of accounting and reporting shall include forms showing the sources from which the public revenue is received, the amount collected from each source, the amount expended for each purpose, and the use and disposition of public property. It shall also include forms for every public service industry, showing cost of ownership and operation, amount collected from private users, amount received from taxation, and value of service rendered the public. (Emphasis added.)²

Unlike R.C. 5501.15, R.C. 117.05(A) refers not only to a system of accounting, but also to a system of reporting. R.C. 117.01 creates the Bureau of Inspection and Supervision of Public Offices within the office of the Auditor of State and imposes a duty on such bureau to "inspect and supervise the accounts and reports of all

²R.C. 117.05(A) was amended in Am. Sub. H.B. 440, 113th Gen. A. 1980 (eff. March 31, 1981). Section 3 (uncodified) of Am. Sub. H.B. 440 provides as follows: "rules adopted pursuant to sections 117.05, 117.051, 117.09 and 117.091 of the Revised Code [will be] effective not earlier than September 1, 1983 and not later than January 31, 1984." Section 4 (uncodified) of Am. Sub. H.B. 440 further provides that: "[u]ntil rules adopted pursuant to section 117.05, 117.051, 117.09, or 117.091 of the Revised Code as amended by this act become effective, the version of section 117.05, 117.051, 117.09, or 117.091 of the Revised Code in existence prior to its amendment by this act applies to the extent rules adopted pursuant to the section as amended by this act are necessary for implementing the section as amended by this act." Thus, until those rules adopted pursuant to R.C. 117.05 as amended by Am. Sub. H.B. 440 become effective, R.C. 117.05(A) as quoted above is controlling and relied upon in responding to your request.

state offices as provided in sections 117.01 to 117.19, inclusive of the Revised Code." R.C. 117.06 provides that "[a] final report of each public institution or taxing district for each fiscal year shall be made in accordance with forms prescribed by the chief inspector and supervisor of public offices" (emphasis added).

A longstanding rule of statutory construction states that a special law repeals an earlier general law to the extent of any irreconcilable conflict between their provisions. Metropolitan Securities Co. v. Warren State Bank, 117 Ohio St. 69, 158 N.E. 81 (1927); State ex rel Crabbe v. City of Cleveland, 115 Ohio St. 484, 154 N.E. 738 (1926). In this sense the special law operates as an exception to the general one to the extent of the conflict. 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.

R.C. 117.05 dates back to the Revised Statutes and General Code. G.C. 277.278; R.S. 181 a-2, 181 a-4. It is a general directive to the Auditor of State to establish a uniform system of accounting and reporting for all public offices. R.C. 5501.15, adopted by 1945-1946 Ohio Laws 455 (Am. S.B. 204 eff. Oct. 11, 1945), is clearly the more recent statute. It covers a more particular purpose and subject matter and is therefore considered a special statute. See, e.g., Leach v. Collins, 123 Ohio St. 530, 176 N.E. 77 (1931). As such it creates an exception to the general provisions of R.C. 117.05 to the extent of the conflict. Under R.C. 5501.15 and R.C. 117.05, the auditor for ODOT must establish an accounting system for the Department, which need not conform to the uniform system established by the Auditor of State. Where, however, the Auditor of State has prescribed a form to be used for reporting purposes, ODOT has no authority by virtue of R.C. 5501.15 or any other Ohio statute of which I am aware to disregard the use of such form.

The language of R.C. 117.05(A) requires that forms be prescribed for the "separation and verification" of each transaction of a public office. This language makes it clear that the forms prescribed by the Auditor are intended to be used to reflect what has occurred in any particular transaction. They are clearly not intended to be used by the Auditor to regulate the manner in which any particular transaction occurs. Moreover, the State Auditor clearly has no authority to prescribe the use of a form where the completion of such form would require acts not in conformity with law.

In 1916 Op. Att'y Gen. No. 1399, vol. I, p. 517, 519, my predecessor, considering G.C. 277 and 274, which were the predecessors to R.C. 117.05 and 117.01, respectively, concluded as follows:

Under the provisions of section 277, G.C., the auditor of state is fully authorized to prescribe and require a system of accounting and reporting for all county offices and other officials named in section 274, G.C. This section, therefore, gives your department ample power to provide any plan it may choose to adopt for the reporting and accounting of the moneys under consideration here. (Emphasis added.)

In 1932 Op. Att'y Gen. No. 4559, vol. II, p. 957, my predecessor concluded that the Auditor of State, through his Bureau of Inspection and Supervision of Public Offices, has the authority to prescribe the forms to be submitted by various state agencies. In that opinion, involving the State Board of Accountancy and interpreting G.C. 277 and 274, my predecessor concluded as follows: "The Auditor of State has the authority to prescribe the form of voucher to be submitted by public officers, such as members of the Board of Accountancy" (emphasis added).

In a 1971 opinion involving the Board of Nursing Education and Nurse Registration, I agreed with my predecessors and, in 1971 Op. Att'y Gen. No. 71-049, opined as follows: "[I]t is my opinion that the Auditor of State, through the Chief Inspector and Supervisor of Public Offices, may, in his discretion, prescribe requirements for audit of records of the Board, including requirement [sic] for replacing licenses" (emphasis added).

Thus, based upon the language of R.C. 5501.15, R.C. 117.05 and R.C. 117.01, it is my opinion that ODOT is required to follow the forms prescribed by the Auditor of State in reporting the Department's financial transactions to the Auditor. However, it should be made clear at this point that the preceding conclusion applies only to forms which pertain to the reporting of ODOT financial transactions. I am not aware of any provision of Ohio law which requires ODOT to use a form prescribed by the Auditor of State where such form is not required for reporting purposes. Further, as I stated above, the Auditor of State has no authority to regulate the manner in which ODOT makes its purchases by prescribing the use of a particular form.

You are also concerned with the question of ODOT's authority to purchase any item of supply or equipment and the procedures which ODOT is required to follow on making such purchases. Of importance to the resolution of this question are R.C. 125.04, 125.06 and 5513.01.

R.C. 125.04 provides that the Department of Administrative Services, when it deems necessary, shall determine what supplies and equipment shall be purchased and furnished for all departments. The statute then excludes a few entities from the operation of this rule. R.C. 125.04 states:

Whenever it is deemed necessary, the department of administrative services shall determine what supplies and equipment, required for the use and maintenance of the departments and offices of all elective and appointive state officers, boards, and commissions, shall be purchased and furnished, and what contracts of insurance authorized by law shall be purchased and furnished for such officers, boards, and commissioners. Supplies and equipment, and contracts of insurance, for boards of elections, courts of appeals, courts of common pleas, the supreme court, the general assembly, maintenance of the Ohio national guard, and agricultural experimental stations of the state, shall not be included in such lists of supplies and contracts of insurance to be purchased and furnished by the department of administrative services. Sections 125.04 to 125.15 of the Revised Code do not apply to or affect the educational institutions of the state.

R.C. 125.06 requires that all departments, except those excepted in R.C. 125.04, must purchase all supplies and equipment, inter alia, from or through ODAS unless ODAS gives the department a written release. R.C. 125.06 provides as follows:

No elective or appointive state officer, board, or commission, other than those excepted in section 125.04 of the Revised Code, shall procure or purchase any supply or equipment or contract of insurance or make contracts for or operate data processing machine services other than from or through the department of administrative services. When the department determines that it is impractical for any officer, board, or commission to obtain any supply or equipment, or contract of insurance, or to contract for or operate data processing machine services from or through the department, it may issue to such officer, board, or commission a release and permit to secure such supply or equipment or contract of insurance or to contract for or operate data processing machine services other than from or through the department. A release and permit for supply or equipment or contract of insurance shall specify the items of supply

or equipment or contract of insurance, the office or institution to which the release and permit is operative, and may specify the quantity of each item of supply or equipment or amount of insurance to be procured by such officer, board, or commission, and shall also state the reason for its issuance. A release and permit for data processing machine services shall specify the type of services to be rendered, the number and type of machines to be employed, the office or institution to which the release and permit applies, and the time during which such release and permit is operative, and may specify the amount of such services to be performed, and shall also specify the reason for its issuance. Every release and permit shall be in triplicate, one copy to be filed with the officer, board, or commission to whom it is issued, one copy to be filed with the auditor of state, and one copy to be filed with the department. (Emphasis added.)

You have indicated that the language of R.C. 5513.01 appears to authorize ODOT to make direct purchases without securing a written release from ODAS as required by R.C. 125.06. R.C. 5513.01 provides as follows:

All purchases of machinery, materials, supplies or other articles which the director of transportation makes shall be in the manner provided in this section. In all cases except those in which the director authorizes purchases by district deputy directors of transportation, all such purchases shall be made at the office of the department of transportation in Columbus. Before making any purchase at said office, the director shall, as provided in this section, give notice to bidders of his intention to purchase. Where the expenditure is not more than five hundred dollars, the director shall give such notice as he deems proper, or he may make the purchase without notice. Where the expenditure is more than five hundred dollars, the director shall give notice by posting for not less than ten days a written, typed, or printed invitation to bidders on a bulletin board which shall be located in a place in the office assigned to said department and open to the public during business hours. (Emphasis added.)

Considering the predecessors to R.C. 125.04, R.C. 125.06, and R.C. 5513.01, a former Ohio Attorney General opined in 1939 that the Department of Highways (now ODOT) was required to obtain a permit from the Department of Finance (now ODAS) before contracting independently for supplies. 1939 Op. Att'y Gen. No. 1112, vol. II, p. 1619. The then Attorney General concluded that if the Department of Finance issued a permit allowing the State Highway Director to purchase particular supplies, G.C. 1226-1 (now R.C. 5513.01) became operative and applied to the manner in which the Department purchased the supplies. The then Attorney General stated in paragraph 3 of the syllabus of 1939 Op. No. 1112, as follows:

The Department of Finance [now called ODAS] has exclusive authority to purchase printed matter required for the use of Department of Highways unless the Department of Finance issues a release and permit to the Department of Highways pursuant to the provisions of Section 196-6, General Code [now R.C. 125.06]. (Emphasis added.)

In 1961 Op. Att'y Gen. No. 2092, p. 169, one of my predecessors opined again that all departments covered by R.C. 125.13 (now R.C. 125.06) must obtain a release from ODAS before purchasing supplies or equipment. The first paragraph of the syllabus of 1961 Op. No. 2092 provides as follows:

Under Sections 125.08, 125.11, and 125.13, Revised Code, the department of finance (now ODAS) is authorized to purchase all necessary supplies and equipment for state departments if it so

elects, but is without authority to determine whether any of such supplies and equipment should be purchased.

Once ODOT has been authorized by ODAS to purchase any supply or equipment other than from or through ODAS, R.C. 5513.01 sets forth the procedure to be followed in making such purchases. R.C. 5513.01 can be characterized as a competitive bidding statute which outlines the procedures ODOT is required to use in making its purchases after receiving authorization from ODAS, by issuance of a release or permit, to make such purchases. The initial sentence of R.C. 5513.01, which states that "[a]ll purchases of machinery, materials, supplies or other articles which the director of transportation makes shall be in the manner provided in this section," mandates that the director follow the procedures set forth in R.C. 5513.01 when making purchases. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) ("shall" is generally construed as imposing a mandatory duty). Therefore, where ODOT has received permission to make purchases itself, such purchases must be made in accordance with the competitive bidding requirements of R.C. 5513.01 as opposed to the procedures established by ODAS. In certain instances, however, the legislature has provided that the competitive bidding procedures of R.C. 5513.01 need not be followed. R.C. 5525.14 provides that once an original contract has been entered into ODOT's director may declare an emergency and contract for extra work or increase in quantities without advertising for bids. Similarly, R.C. 127.16 provides:

Upon the request of either a state agency or the director of budget and management and after the controlling board determines that an emergency or a sufficient economic reason exists, the controlling board may:

. . . .

(C) Waive the competitive bidding requirements specified by law for a state agency's:

- (1) Purchase of commodities to cost two thousand dollars or more;
- (2) Construction or repair of any building or making of any other improvement to cost ten thousand dollars or more.

Based on the foregoing, it is my opinion, and you are advised, that:

1. In reporting its financial transactions to the Auditor of State, the Ohio Department of Transportation is required to follow the forms for reporting established in directives of the Department of Administrative Services and prescribed by the Auditor. However, ODOT is not required to follow any form prescribed by the Auditor if the use thereof is not required for reporting purposes or if the completion of such form would either require acts not in conformity with law or prevent action otherwise permissible.
2. Where ODOT has not obtained ODAS permission to make its own purchases, ODOT is required to follow purchasing procedures established in ODAS directives and prescribed by the Auditor. However, where, by issuance of a release and permit, ODOT has obtained ODAS permission to make its own purchases, ODOT is not required to follow such procedures.