Note from the Attorney General's Office:

The syllabus paragraph 2 of 2010 Op. Att'y Gen. No. 2010-001 was overruled in part due to statutory change by 2015 Op. Att'y Gen. No. 2015-017.

OPINION NO. 2010-001

Syllabus:

2010-001

1. A board of county commissioners has a mandatory duty under R.C. 307.01 to provide the county law library resources board with offices and necessary facilities.
2. A board of county commissioners has no statutory authority to charge a county law library resources board for space or utilities, or a fee for indirect costs, overhead, or centralized or support services.
3. A board of county commissioners has the discretion, but is not required, to appropriate money from the general fund for the use of the county law library resources board beyond the offices and necessary facilities the board of commissioners is required to provide under R.C. 307.01.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Richard Cordray, Ohio Attorney General, January 7, 2010

You have asked about the extent of a board of county commissioners' responsibility under Am. Sub. H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008) to provide space and utilities and general fund moneys to the county law library resources board (LLRB). You wish to know whether Am. Sub. H.B. 420 requires the board of county commissioners to provide space and utilities for the use of the county law library, and if it does provide space and utilities, whether it may charge these costs to the LLRB. You also ask whether the commissioners have a duty to appropriate general fund money to the LLRB or whether their sole duty is "to approve [a] county library resource board's estimated annual budget and disburse general fund monies they do elect to appropriate on a semi-annual basis."

Traditionally, county law libraries have been operated by county law library associations, which are private entities organized as private associations or nonprofit corporations under R.C. 1713.28. *See Van Wert County Law Library Association v. Stuckey,* 60 Ohio L. Abs. 1 (C.P. Van Wert County 1949); 1995 Op. Att'y Gen. No. 95-029; 1986 Op. Att'y Gen. No. 86-102. If they met certain conditions, law library associations were statutorily entitled to financial support from the county—the compensation of the law librarian and that of not more than two assistant librarians was paid from the county treasury, and the board of county commissioners was required to provide rooms and utilities at county expense. *See* 2004 Op. Att'y Gen. No. 2004-010; 1988 Op. Att'y Gen. No. 88-104. County law library associations could also receive certain fines, penalties, and forfeited bail, as well as dues, fees, and gifts from private donors. *See Van Wert County Law Library Association v. Stuckey*; 2004 Op. Att'y Gen. No. 2004-010.

Am. Sub. H.B. 420 has profoundly altered the organization and operation of county law libraries.[1] It has created in each county a new county entity, the law library resources board, which must "provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and shall manage the coordination, acquisition, and utilization of legal resources." R.C. 307.51(B). Am. Sub. H.B. 420 also established in each county treasury, effective January 1, 2010, a county law library resources fund to receive the fines, penalties, and forfeited bail previously paid to the law library associations. R.C. 307.514; R.C. 307.515. Any money appropriated by the board of county commissioners from the general fund (as discussed below), fees, gifts, and bequests are also deposited into the county law library resources fund. R.C. 307.514. During calendar year 2009, the board of county commissioners continued to be responsible under R.C. 3375.49 for providing, at county expense, space and utilities for the law library, and paying the compensation of the law librarian and up to two assistant librarians. Effective December 31, 2009, however, R.C. 3375.49 was repealed. Am. Sub. H.B. 420 (§ 101.03, uncodified).[2]

Under Am. Sub. H.B. 420, the LLRB must prepare an annual estimate of its revenue and expenditures for the calendar year beginning January 1, 2010 and for subsequent years, and submit the estimate to the board of county commissioners under R.C. 5705.28, just as other county agencies do. R.C. 307.513(A). The estimate of expenses must be "sufficient to provide for the operation of the county law library resources board," and include "a specific request for monies to be appropriated to the county law library resources fund . . . from the county general fund for the ensuing fiscal year." *Id.* The board of county commissioners "may appropriate funds from the county general fund for the use of the county law library resources board," R.C. 307.513(B), which are deposited into the county law library resources fund, R.C. 307.514.[3] Expenditures from the county law library resources fund must be made pursuant to the annual appropriation measure adopted by the board of

[1] In 2005 and 2006, two pieces of legislation were enacted to incrementally transfer, from the counties to the county law library associations, the responsibility for paying the compensation of law librarians, the costs of the space provided by the county for the use of the law library, the utilities for the space, and the furniture and fixtures for the law library. Am. Sub. H.B. 420 repealed this statutory scheme in uncodified sections 101.02 and 101.03. 2007 Op. Att'y Gen. No. 2007-012 describes in detail this earlier legislation, Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. Sept. 29, 2005) and Sub. H.B. 363, 126th Gen. A. (2006) (eff. Aug. 3, 2006), with regard to compensation matters.

[2] Under Am. Sub. H.B. 420, the county law library resources board (LLRB) is responsible for employing a law librarian and additional staff, and fixing their compensation. R.C. 307.51(C). All employees of the LRRB are in the unclassified civil service of the county. *Id.*

[3] If the board of county commissioners does appropriate general fund moneys to the county law library resources fund, it must, within fifteen days after adopting its annual appropriation measure under R.C. 5705.38, transfer fifty percent of the ap-

county commissioners under R.C. 5705.38 and paid upon warrant of the county auditor. R.C. 307.513(B); R.C. 307.514.

We turn now to your questions whether the board of county commissioners is required by Am. Sub. H.B. 420 to provide the law library with space and utilities, and, if it does provide space and utilities, whether it may charge the LLRB the cost thereof.

As noted above, R.C. 3375.49, which required the board of commissioners to provide at county expense space and utilities for the law library, was repealed effective December 31, 2009. Am. Sub. H.B. 420 has established the LLRB as a county agency, however, and the board of county commissioners has a duty under R.C. 307.01 to provide county officers with offices and "such facilities as will result in expeditious and economical administration of such [county] offices." This duty has been interpreted as mandatory. *See* 1986 Op. Att'y Gen. No. 86-104 (syllabus, paragraph 1) ("[p]ursuant to R.C. 307.01, the board of county commissioners is required to provide offices for the county children services board"); 1983 Op. Att'y Gen. No. 83-053. Thus, even though R.C. 3375.49, which required the board of county commissioners to provide law libraries with space and utilities, was repealed, effective December 31, 2009, the board nonetheless has a mandatory obligation under R.C. 307.01 to provide the LLRB with offices and necessary facilities.

We turn now to your question whether the board of county commissioners may charge the LLRB rent and the cost of utilities. In 1982 Op. Att'y Gen. No. 82-011, the Attorney General advised that "[i]f a service is performed for a public office by an office of county government, whether on a mandatory or discretionary basis, a board of county commissioners may not charge the office receiving such service unless there is express statutory authorization for such charge or authority implied from an express power." *Id.* (syllabus, paragraph 1). This proposition has been followed in subsequent opinions. *See, e.g.*, 2001 Op. Att'y Gen. No. 2001-024 (approving and following paragraph 1 of 1982 Op. Att'y Gen. No. 82-011); 1995 Op. Att'y Gen. No. 95-004 (syllabus, paragraph 1) ("[a] board of county commissioners that establishes a countywide public safety communications system pursuant to R.C. 307.63 may not require municipal corporations and townships that use the system to pay the board for the costs it incurs in connection with the operation, maintenance, and management of that system"); 1986 Op. Att'y Gen. No. 86-104. *See also, e.g.*, 2009 Op. Att'y Gen. No. 2009-004 (syllabus) ("[a] county sheriff who operates a public service answering point as part of a countywide 9-1-1 system has no authority to charge the board of county commissioners, which operates an emergency medical service organization, a fee for dispatching the organization's ambulances").

More specifically, a board of commissioners may not charge another public agency for the cost of rent and utilities unless it has the statutory authority to do so. *See* 2001 Op. Att'y Gen. No. 2001-024 (syllabus) ("[a] board of county commis-

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propriation to the county law library resources fund and transfer the remaining fifty per cent no later than July 15th of that year. R.C. 307.513(B).

sioners may not charge a public body . . . for utility or rent expenses, unless there is express statutory authorization for the charge or authority implied from an express power''); 1986 Op. Att'y Gen. No. 86-104 (syllabus, paragraph 2) (''[t]he board of county commissioners may not charge rent for office space it provides to the county children services board''). The General Assembly has authorized a board of county commissioners to charge rent in certain instances. *See, e.g.*, R.C. 307.02 (a board of county commissioners may ''establish and collect rents'' for ''retail store rooms and offices, if located in a building acquired to house county offices'' and may ''establish and collect rates, charges, or rents'' for the use of off-street parking facilities). By failing to include such language for charging LLRB's in Am. Sub. H.B. 420 (or elsewhere), the General Assembly has indicated its intent to withhold from the board of county commissioners the authority to charge the county LLRB such costs. *Cf.* R.C. 307.846 (the county automatic data processing board may impose charges on law library associations, county offices, and other entities for its services). *See generally Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the legislature had intended a particular meaning, ''it would not have been difficult to find language which would express that purpose,'' having used that language in other connections); *State ex rel. Enos v. Stone,* 92 Ohio St. 63, 67, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

We understand that some counties wish to charge the LLRB a ''cost allocation fee''—presumably, a type of charge for overhead or indirect costs or for centralized or support services—instead of charging specifically for rent and utilities. As with rent and utilities charges, however, a board of county commissioners may not charge these types of administrative fees or costs unless it has the statutory authority to do so. 2001 Op. Att'y Gen. No. 2001-024 (syllabus and at 2-135) (''[a] board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer . . . unless there is express statutory authorization for the charge or authority implied from an express power''; this principle applies to charging ''public bodies outside the county's general budget''); 1982 Op. Att'y Gen. No. 82-011.[4] Again, there are examples where the General Assembly has granted the board of county commissioners such authority. Indeed, immediately following the sentence in R.C. 307.01 requiring the board of county commissioners to provide county offices with offices and facilities is the provision that ''for the purpose of obtaining federal or state reimbursement, the board may impose

[4] As an example of a statute from which the authority to charge for centralized services may be implied, 1982 Op. Att'y Gen. No. 82-011 cites R.C. 307.85, which authorizes a board of county commissioners to participate in the establishment and operation of any federal program and to adopt procedures and take any action, not otherwise prohibited by the constitution or state law, for such purpose. The opinion explains that if ''it is necessary for a board of county commissioners to charge a public office for certain services in order to obtain from that office the federal reimbursement funds which are or will be due to the county, the authority to do so may be implied from R.C. 307.85.'' *Id.* at 2-38.

on the public children services agency reasonable charges, not exceeding the amount for which reimbursement will be made and consistent with cost-allocation standards adopted by the department of job and family services, for the provision of office space, supplies, stationery, utilities, telephone use, postage, and general support services." *See also, e.g.,* R.C. 343.08(B) (a board of county commissioners "may adopt a cost allocation plan that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from the fund of [the county solid waste management district] and prescribes methods for allocating those costs . . . . The plan shall not authorize payment from the fund of any general government expense required to carry out the overall governmental responsibilities of a county"). If the General Assembly had intended to authorize the board of county commissioners to charge the LLRB a "cost-allocation" fee or other type of administrative charge, it could have done so in language comparable to that cited above. However, a board of county commissioners has no statutory authority to charge a county law library resources board rent, the cost of utilities, or a cost allocation fee.

Your last question is whether a board of county commissioners is required to appropriate money from the general fund to the LLRB. R.C. 307.513(B) states that the "board of county commissioners *may* appropriate funds from the county general fund for the use of the county law library resources board." (Emphasis added.) Use of the word "may" in a statute is generally construed as permissive rather than mandatory "unless there appears a clear and unequivocal legislative intent" that it "receive a construction other than [its] ordinary usage." *Dorrian v. Scioto Conservancy District,* 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1). *See also* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). "The statutory use of the word 'may' is generally construed to make the provision in which it is contained optional, permissive, or discretionary . . . at least where there is nothing in the language or in the sense or policy of the provision to require an unusual interpretation." *Dorrian v. Scioto Conservancy District,* 27 Ohio St. 2d at 107. "Ordinarily, the word, 'shall,' is a mandatory one, whereas 'may' denotes the granting of discretion." *Dennison v. Dennison,* 165 Ohio St. 146, 149, 134 N.E.2d 574 (1956).

"However, in order to serve the basic aim of construction of a statute—to arrive at and give effect to the intent of the General Assembly—it is sometimes necessary to give to the words 'may' and 'shall' as used in a statute, meanings different from those given them in ordinary usage . . . and one may be construed to have the meaning of the other." *Dorrian v. Scioto Conservancy District,* 27 Ohio St. 2d at 107-108. "But when this construction is necessary, the intention of the General Assembly that they shall be so construed must clearly appear . . . from a general view of the statute under consideration . . . as where the manifest sense and intent of the statute require the one to be substituted for the other." *Id.* at 108.

In this instance, we see no evidence that the General Assembly intended to give the term "may" anything other than its usual statutory meaning. If the board of county commissioners were required to make monetary appropriations from the general fund to the LLRB, we would expect to see some indication of the level of

support the county would be required to make. For example, Am. Sub. H.B. 66 and Sub. H.B. 363, *see* note 1, *supra,* set forth a specific proportionate share of the law library's expenses that the county was required to contribute under the funding scheme they established. Division (B) of R.C. 307.51 does require a LLRB to begin providing its services on January 1, 2010, "subject to appropriation pursuant to [R.C. 307.513]." The General Assembly has thus linked the responsibility of an LLRB to provide services to the general fund moneys it receives from the county, although the exact correlation between the LLRB's duties and its support from the general fund is not further described. We do not view this imprecise proviso, however, as unequivocally requiring the board of county commissioners to appropriate general fund money to the LLRB.

Ultimately, only a court can determine whether the term "may" should be interpreted as mandatory. *See, e.g., Black v. Board of Revision,* 16 Ohio St. 3d 11, 475 N.E.2d 1264 (1985). However, we see no clear legislative intent that the word "may," as used in R.C. 307.513(B), "receive a construction other than [its] ordinary usage." Therefore, a board of county commissioners has the discretion, but is not required, to appropriate money from the general fund for the use of the LLRB. As discussed above, however, the board of commissioners is required to provide the LLRB with offices and necessary facilities.

In conclusion, it is my opinion, and you are advised that:

1. A board of county commissioners has a mandatory duty under R.C. 307.01 to provide the county law library resources board with offices and necessary facilities.

2. A board of county commissioners has no statutory authority to charge a county law library resources board for space or utilities, or a fee for indirect costs, overhead, or centralized or support services.

3. A board of county commissioners has the discretion, but is not required, to appropriate money from the general fund for the use of the county law library resources board beyond the offices and necessary facilities the board of commissioners is required to provide under R.C. 307.01.