

**Note from the Attorney General's Office:**

Syllabus paragraphs 1 and 3 of 2003 Op. Att'y Gen. No. 2003-029 were approved and followed by 2015 Op. Att'y Gen. No. 2015-011.

**OPINION NO. 2003-029****Syllabus:**

1. A county auditor is authorized to examine a claim against the county treasury, including a claim for payment of travel expenses, to ensure that all statutory requirements have been met and the claim is proper in purpose and amount, before issuing a warrant in payment of the claim. The auditor has a duty to deny issuance of a warrant if these standards are not met, and a writ of mandamus will not lie to compel the auditor to issue a warrant unless the claimant has a clear legal right to payment.
2. The requirement of R.C. 325.20(A), that the board of county commissioners authorize in advance payment for county officers and

employees to attend association meetings and conventions, does not preempt, or substitute for, the authority of the county auditor under R.C. 307.55 and R.C. 319.16 to determine, prior to issuing a warrant, the propriety of a request submitted by a county officer or employee for reimbursement of his travel expenses.

3. It is within the authority of the county auditor to determine what constitutes sufficient "evidentiary matter" for purposes of R.C. 319.16, and to require that requests for reimbursement of travel expenses be accompanied by itemized receipts rather than credit card statements where necessary to satisfy her that an expense is eligible for reimbursement under an agency's travel policy.
4. A county auditor does not have the authority to set a travel policy for county offices other than her own. Each county board and appropriate department or office head has the discretion to establish, for that agency's officers and employees, a written policy setting forth the type and amount of travel expenses that may be reimbursed by the county. A written travel policy is necessary to the county auditor's determination of whether a request for reimbursement should be paid. A written policy also serves to guide agency's officers and employees and is essential to the protection of county funds.

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**To: C. David Warren, Athens County Prosecuting Attorney, Athens, Ohio**  
**By: Jim Petro, Attorney General, September 18, 2003**

You have asked about the scope of a county auditor's authority to deny the requests of county officers and employees for reimbursement of travel expenses. In the situation that gave rise to your question, a county commissioner attended an out-of-town conference, and submitted with his request for reimbursement for the cost of a meal, a credit card statement showing the name of the restaurant and total charge. He did not, however, include an itemized bill or receipt from the restaurant detailing the particular items consumed. The auditor declined to issue payment on the grounds that she could not determine whether any of the cost was for alcoholic beverages or a tip, which she asserted would not be eligible for reimbursement. You wish to know whether the auditor has the authority to prescribe the type of "evidentiary matter" that must be submitted by county officers and employees requesting reimbursement for travel expenses. You also wish to know whether the auditor has the authority to set standards for what are reimbursable travel expenses.

#### **Claim for Expenses**

Before addressing your specific questions, we must begin with a discussion of the statutory scheme that governs the processing of claims presented for payment from the county treasury, and the duties of the county auditor with respect thereto. The allowance and payment of claims against the county are addressed in R.C. 307.55 and R.C. 319.16. Division (A) of R.C. 307.55 states: "No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant ... of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the

claim.”<sup>1</sup> R.C. 319.16 similarly provides that, “[t]he county auditor shall issue warrants ... on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys.” The term “evidentiary matter” is defined to include “original invoices, receipts, bills and checks, and legible copies of contracts.” *Id.* Like R.C. 307.55(A), R.C. 319.16 prohibits the auditor from issuing a warrant for the payment of a claim “unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal ... so authorized by law.” *Id.*<sup>2</sup>

R.C. 319.16 also sets forth the process by which the county auditor may challenge the validity of an expenditure and withhold payment, as follows:

If the auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the board, officer, or tribunal who presented the voucher. If the board, officer, or tribunal determines that the expenditure is valid and the auditor continues to refuse to issue the appropriate warrant on the county treasury, a writ of mandamus may be sought. The court shall issue a writ of mandamus for issuance of the warrant if the court determines that the claim is valid.

A county auditor may, therefore, dispute the validity of an expenditure, but will be compelled to issue a warrant if the board or officer who presented the voucher seeks a writ of mandamus, and the court finds the claim to be valid. Courts have declined to issue a writ of mandamus, however, where the claimant’s right to payment was not clear, or the act to be enforced was not one of legal obligation. *State ex rel. McKey v. Cooper*, 99 Ohio St. 258, 124 N.E. 192 (1919). In other words, if the claimant has no legal right to enforce payment of the claim, mandamus will not lie. *State ex rel. Baen v. Yeatman*, 22 Ohio St. 546 (1872).

Instances in which a court has denied a writ of mandamus include those where the auditor found that the officer authorizing or making the expenditure or creating the claim exceeded his constitutional or statutory authority or the legal bounds of his discretion, the amount claimed was in excess of what was due, and where the claim had not been allowed by the board of commissioners or other appropriate authority, or other statutory prerequisites for processing the claim had not been followed. *See, e.g., State ex rel. Stevens v. Mum-*

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<sup>1</sup>Division (B) of R.C. 307.55 states: “No public money shall be disbursed by the board [of county commissioners] or any of its members, but shall be disbursed by the county treasurer, upon the warrant ... of the auditor specifying the name of the party entitled to such money, on what account, and upon whose allowance, if not fixed by law.”

<sup>2</sup>R.C. 5705.41 also restricts the manner in which funds may be expended by counties and other subdivisions. For example, no subdivision may “[m]ake any expenditure of money except by a proper warrant drawn against an appropriate fund.” R.C. 5705.41(C). Also, a certificate must be attached, by the county auditor (as the county’s fiscal officer), to any contract or order involving an expenditure of money, that the amount required to meet the obligation has been appropriated and is in the treasury or in the process of collection. R.C. 5705.41(D). An officer, employee, or other person who issues an order contrary to R.C. 5705.41, or who expends or authorizes the expenditure of public funds contrary to the provisions of R.C. Chapter 5705 “shall be liable to the political subdivision for the full amount paid from the funds of the subdivision on any such order, contract, or obligation.” R.C. 5705.45. *See note 6, infra.*

*mev*, 23 Ohio St. 2d 70, 262 N.E.2d 701 (1970) (writ of mandamus to require the county auditor to issue a warrant in payment for services rendered by relator denied where no certificate of the relator's employment and compensation had been filed with the auditor as required by R.C. 325.17); *State ex rel. Boyd v. Tracy*, 128 Ohio St. 242, 190 N.E. 463 (1934) (demurrer to petition to compel the Auditor of State<sup>3</sup> to issue warrants to members of the General Assembly sustained where such payments would constitute an unconstitutional in-term increase in compensation); *State ex rel. Commissioners v. Guilbert*, 77 Ohio St. 333, 83 N.E. 80 (1907) (petition for a writ of mandamus requiring Auditor of State to pay the compensation of an expert witness at a criminal trial denied where the statutory scheme required that the expense be paid from the county treasury); *State ex rel. Beverstock v. Merry*, 34 Ohio St. 137 (1877) (writ of mandamus refused where jurors claimed per diem for days during which court was adjourned and the jurors were discharged); *State ex rel. Flanagan v. McConnell*, 28 Ohio St. 589 (1876) (mandamus refused where claim for payment for blanks supplied to the clerk of courts had not been submitted by the clerk to the board of county commissioners for approval); *State ex rel. Baen v. Yeatman* (writ of mandamus requiring county auditor to pay claim based on a contract made in contravention of competitive bidding statute denied). See also *State ex rel. Krabach v. Ferguson*, 46 Ohio St. 2d 168, 172, 346 N.E.2d 681 (1976) (the "auditor has a statutory responsibility to make a finding of the legality of a claim before he draws a warrant for payment and that finding must be based upon proofs available to the auditor"); *State ex rel. S. Monroe & Son Co., v. Tracy*, 129 Ohio St. 550, 196 N.E. 650 (1935) (syllabus, paragraph six) (it is the duty of the Auditor of State "to examine each voucher presented to him, and unless he finds it to be a valid claim against the state, legally due, and that there is money in the state treasury duly appropriated to pay it, to refuse to issue his warrant on the Treasurer of State"); *State ex rel. Manix v. Auditor*, 43 Ohio St. 311, 321, 1 N.E. 209 (1885) ("[i]t is not doubted that it is competent for an auditor to defend against an application for mandamus to compel him to issue his warrant on the treasurer upon an allowance and order of the commissioners, by showing that the order was wholly unauthorized, and that the commissioners had no authority to make it"); *Putnam County Commissioners v. Allen County Auditor*, 1 Ohio St. 322 (1853) (syllabus, paragraph two) ("[m]andamus will not lie to compel the auditor of a county to draw an order on the treasurer of the county where the auditor has not the right to fix the amount to be drawn for,

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<sup>3</sup>Prior to 1985, the Auditor of State had the responsibility under what was then R.C. 115.35 (or G.C. 243) to examine vouchers of state agencies and draw a warrant on the state treasury for payment thereof if he found there to be a valid and legally due claim against the State, if there was money in the state treasury appropriated to pay it, and if all requirements of law had been met. See 1981-1982 Ohio Laws, Part II, 3460, 3477 (Am. Sub. H.B. 694, eff. Nov. 15, 1981). The Auditor of State's authority in this regard was then much like that of the county auditors, and thus cases involving the Auditor of State, decided prior to 1985, are instructive to questions involving the authority of county auditors.

In 1985-1986 Ohio Laws, Part I, 1760, 1914-16 (Sub. H.B. 201, eff. July 1, 1985), however, the General Assembly transferred to the director of the Office of Budget and Management the authority to approve vouchers for payment. See generally 1986 Op. Att'y Gen. No. 86-066. R.C. 126.07 was amended by Sub. H.B. 201 to provide that, "[i]n order to make a payment from the state treasury, a state agency shall first submit to the director all invoices, claims, vouchers, and other evidentiary matter related to the payment." The director may not approve a payment if he finds that the "payment is not for a valid claim against the state that is legally due, or that *insufficient evidentiary matter has been submitted*" (emphasis added). R.C. 126.07. If the director approves payment, he must submit his approval to the Auditor of State for the drawing of a warrant as provided in R.C. 117.45(A).

unless such amount has been ascertained and liquidated"); 1962 Op. Att'y Gen. No. 3205, p. 647; 1961 Op. Att'y Gen. No. 1999, p. 28; 1937 Op. Att'y Gen. No. 930, vol. II, p. 1652, at 1660 ("in the exercise of his discretion the county auditor has authority to refuse to issue a warrant if it is unauthorized or if the officer making it acted without authority"); 1937 Op. Att'y Gen. No. 142, vol. I, p. 202.

An auditor may properly deny payment under such circumstances even where the board of county commissioners or other appropriate authority has allowed payment of the expense.<sup>4</sup> See *State ex rel. Krabach v. Ferguson*, 46 Ohio St. 2d at 172-73 ("the auditor is not bound by determinations of legality made by other state officers," and "[i]n order to effectively carry out his responsibility to safeguard public funds, the auditor also cannot be conclusively bound by the assertions of the Director of Administrative Services, where there are valid grounds to question the legality of the claims"); *State ex rel. Commissioners v. Guilbert*, 77 Ohio St. at 342 (the statutory scheme providing for the prosecuting attorney and other officials to examine the correctness of an expense bill "are cumulative safeguards," and "being such, the auditor of state is not concluded by the determination of the prosecuting attorney"); *Jones v. Commissioners*, 57 Ohio St. 189, 48 N.E. 882 (1897) (it is not necessary to show fraud or mistake in order for the auditor to avoid the conclusive effect of the commissioners' allowance under the provisions of what is now R.C. 307.55); *State ex rel. Beverstock v. Merry*, 34 Ohio St. at 142 (clerk of courts' certificate showing the amounts due jurors was "not of such a conclusive character as to estop the [auditor] from showing the facts in relation to the nature of the claims of the [jurors] in answer to their demand for a mandamus to compel him to issue orders on the treasury" for compensation to which they were not entitled); *State ex rel. Baen v. Yeatman*; 1961 Op. Att'y Gen. No. 1999, p. 28; 1937 Op. Att'y Gen. No. 930, vol. II, p. 1652.

However, mere disagreement with the advisability of an expenditure or concern over the manner in which an obligation to the county was performed is insufficient to justify an auditor's refusal to issue a warrant. See *State ex rel. Krabach v. Ferguson*, 46 Ohio St. 2d at 171 (the "auditor must necessarily make findings as to the legality of claims against the state, but in doing so he must rely upon law, and not discretion"); *State ex rel. Jewett v. Sayre*, 91 Ohio St. 85, 109 N.E. 636 (1914) (a board of county commissioners has the authority to compound or release its claim for damages against a contractor, and the auditor has no authority, in the absence of fraud, to refuse to issue payment to the contractor based on his belief that the contentions of the contractor, upon which the commissioners relied in compounding the claim, were not factual); *State ex rel. Manix v. Auditor*, 43 Ohio St. at 320-21 ("[i]t is not enough that the auditor may honestly entertain doubts concerning the propriety of the original order or the effect of the order of rescission. The right to a writ of mandamus to enforce the performance of an official act by a public officer depends upon his legal duty

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<sup>4</sup>As set forth above, it is the duty of a board of county commissioners under R.C. 307.55 and R.C. 319.16 to determine whether a claim should be allowed, unless the amount due is fixed by law or is authorized to be fixed or allowed by another entity. In order to perform this duty, the board must ascertain whether the claim has a legal basis and is reasonable in amount. See 1986 Op. Att'y Gen. No. 86-024; 1985 Op. Att'y Gen. No. 85-066. As characterized in *Jones v. Commissioners*, 57 Ohio St. 189, 213-216, 48 N.E. 882 (1897), the power granted to a board of county commissioners under what is now R.C. 307.55 "is a very narrow one," being confined to a determination of whether the claim has a legal basis, and if so, whether in fact a service was rendered, and the amount to be paid upon an unliquidated claim. See also R.C. 307.56 ("[a] person aggrieved by the decision of the board of county commissioners may appeal to the court of common pleas").

and not upon his doubts"); *State ex rel. Bitucote Hartex Co. v. Westenbaker*, 26 Ohio L. Abs. 564 (App. Darke County 1937) (county auditor may not refuse to issue a warrant on a contract claim allowed by the county commissioners because he believes that materials supplied under the contract did not conform to the contract specifications). *Cf. State ex rel. Tele- Communications, Inc. v. McCormack*, 44 Ohio App. 3d 49, 49-50, 541 N.E.2d 483 (Cuyahoga County 1988) (writ of mandamus, ordering the county auditor to perform his duty under R.C. 5705.41(D) to certify that funds were available to meet the contractual obligations of the board of commissioners, granted despite "his doubts as to the appropriateness of the awarding of the contract to relator due to an investigation of relator's business activities by a federal agency.... [a]lthough acting out of the best of motives, the county auditor is not called upon to pass upon the merits or the appropriateness of the awards made by the board of county commissioners;" however, the court denied a writ ordering the auditor to issue a warrant since the claim had not yet been fully allowed by the board of county commissioners).

Of particular note with regard to travel expenses is the case of *State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948). In *Leis*, the Auditor of State refused to issue a warrant to a member of the state Board of Liquor Control to reimburse the member, a resident of Cincinnati, for living expenses he incurred while in Columbus attending to his official duties. The relator's position was full-time and he received a "substantial annual salary for the performance of the duties of his office." *Id.*, 149 Ohio St. at 557. The Board member filed a writ of mandamus against the Auditor requiring him to issue a warrant for the expenses, relying upon G.C. 6064-5, which authorized the payment of a Board member's "actual and necessary traveling expenses incurred in the performance of his official duties."<sup>5</sup> The court denied the writ of mandamus, stating that, "[a]lthough persuasive arguments are advanced supporting relator's claim, the court is not convinced that a *clear legal duty* rests on the respondent, under Section 6064-5, General Code, in its present wording, and under all the circumstances disclosed by the record, to issue the warrant sought" (emphasis in original). *Id.*, 149 Ohio St. at 559. *See also State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967) (syllabus, paragraph three) ("[c]ounty travel expense money is to be paid only to county officials, their deputies and employees, actually incurring authorized travel expense and is not to be paid as a matter of right"); *State ex rel. Ferguson v. Maloon*, 172 Ohio St. 343, 176 N.E.2d 422 (1961) (denying a writ of mandamus against the state Director of Finance requiring him to purchase an automobile for the Treasurer of State's official use, since there was no statute authorizing the reimbursement or payment of traveling expenses for the Treasurer of State, and thus no clear legal duty imposed on the Director to purchase the automobile for the Treasurer's use).

As these cases make clear, a county auditor is authorized to ensure that a claim against the county treasury, including a claim for payment of travel expenses, is proper in purpose and amount, and meets all statutory prerequisites for payment. The auditor is further authorized to deny issuance of a warrant if these standards are not met.<sup>6</sup> A writ of

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<sup>5</sup>R.C. 4301.07 (formerly G.C. 6064-5) now provides that members of the Liquor Control Commission shall receive, in addition to their salary, "the actual and necessary travel expenses in connection with commission hearings and business."

<sup>6</sup>Indeed the auditor may face liability if she issues a warrant upon an illegal claim. As cited in note 2, *supra*, R.C. 5705.41(C) forbids the expenditure of money "except by a proper warrant drawn against an appropriate fund," and R.C. 5705.45 provides that an officer who authorizes the expenditure of public funds contrary to R.C. Chapter 5705 "shall be liable to the political subdivision for the full amount paid from the funds of the subdivision on any

mandamus will not lie to compel the auditor to issue a warrant unless the claimant has a clear legal right to payment.

### **R.C. 325.20—Pre-Approval of Travel Expenses**

In this instance, the claim at issue was for reimbursement of an expense, incurred by a county commissioner while attending an out-of-town conference. Division (A) of R.C. 325.20 prohibits a county officer or employee from attending, at county expense, any association meeting or convention unless authorized by the board of county commissioners. The head of the county office seeking payment of the travel expenses must demonstrate the necessity of such attendance and provide an estimate of costs. *Id.* If a majority of the board approves the application, the expenses are paid from the moneys appropriated to the office for traveling expenses. *Id.* See *State v. McKelvey*, 12 Ohio St. 2d at 94 (“[t]he function of [R.C. 325.20] is to allow public officials to attend authorized activities at public expense,” and “[l]ike all measures providing for the spending of public funds, it is to be strictly construed”); 1985 Op. Att’y Gen. No. 85-066 (overruled, in part, on other grounds by 1991 Op. Att’y Gen. No. 91-008) at 2-251 (pursuant to R.C. 325.20, expenses for attendance of an officer or employee at any association meeting or convention will be borne by the county only if such attendance is authorized by the board of county commissioners, even though money for traveling expenses has been appropriated to the office); 1951 Op. Att’y Gen. No. 690, p. 405, 410 (G.C. 2989-1 [now R.C. 325.20] “calls for a determination by the county commissioners that a particular association meeting or convention is a proper one for the county officials to attend,” and the “commissioners are then given discretion to decide which expenses are proper”). See generally *State ex rel. Leis v. Ferguson* (syllabus, paragraph two) (“[s]tatutes relating to compensation and allowances of public officers [including traveling expenses] are to be strictly construed, and such officers are entitled to no more than that clearly given thereby”).

We assume that, in this instance, the requirements of R.C. 325.20 were met and the commissioner’s travel to the conference and the estimate of his costs were properly approved thereunder. Nonetheless, R.C. 325.20 provides only for the commissioners’ approval of attendance and an *estimate* of costs *prior to* an official’s or employee’s travel. It does not substitute for, or preempt, the auditor’s authority to determine, prior to issuing a warrant, the validity of a claim for reimbursement, made after the expense was incurred. Neither R.C. 307.55 nor R.C. 319.16 makes exception for the payment of expenses incurred in connection with travel approved pursuant to R.C. 325.20, and the auditor must evaluate the propriety of a request for reimbursement of travel expenses, actually incurred, before issuing a warrant therefor.

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such order, contract, or obligation.” See *State ex rel. Justice v. Thomas*, 35 Ohio App. 250, 258, 172 N.E. 397 (Marion County 1930) (the “county auditor is a ministerial officer, and, as the distributing official of the funds of the county, a tax unit, is strictly limited in issuing warrants by [R.C. 5705.41], and penalized for the misplayment of moneys of the county by [R.C. 5705.45]”); 1940 Op. Att’y Gen. No. 3199, vol. II, p. 1177 (syllabus, paragraph three) (“[a] county auditor who pays a claim contrary to law is ... liable for all damages and loss sustained by the county to the extent of such payment”). See also R.C. 319.02 (before entering upon the discharge of his duties, a county auditor must give a bond for the faithful discharge of his official duties); 1937 Op. Att’y Gen. No. 930, vol. II, p. 1652 (syllabus, paragraph two) (“[w]here the county commissioners and the county auditor have in violation or neglect of their official duties permitted an unauthorized expenditure of public funds, [an audit] finding may be made against the county commissioners and county auditor”).



**“Evidentiary Matter”**

As set forth above, R.C. 319.16 directs the county auditor to issue a warrant “upon presentation of the proper order or voucher and evidentiary matter” for the expense to be paid from the treasury. It then defines the term “evidentiary matter” to include “original invoices, receipts, bills and checks, and legible copies of contracts.” You have asked who is authorized to determine the nature of proper “evidentiary matter” as referred to in R.C. 319.16. You have also asked whether this evidence of a claim must be itemized, or whether a general invoice, receipt, bill or check will suffice. In this instance, the county commissioner submitted with his request for reimbursement of meal expenses, a credit card statement showing the name of the restaurant and total charge, but did not include an itemized bill or receipt, issued by the restaurant, detailing the particular items consumed. The auditor declined to issue payment on the grounds that she could not determine whether any of the cost was for alcoholic beverages or a tip, which she contended would not be eligible for reimbursement. (See discussion below of the auditor’s authority to set travel policy.)

It is apparent that, in order to fully and properly perform her duty to determine whether a warrant should be issued for expenses presented to her for payment, an auditor must have access to documentation that will enable her to ascertain the propriety of those expenses. *See generally State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”). The authority to determine what constitutes sufficient “evidentiary material” is necessarily implied from the auditor’s statutory duty to issue warrants upon proper claims. *See State ex rel. Krabach v. Ferguson*, 46 Ohio St. 2d at 173 (the auditor “may require factual proof which is appropriate to demonstrate with a high degree of certainty that each claim is legal and that all requirements of law have been complied with, and mandamus will not lie to require him to issue warrants for claims which are not clearly legal”). *Cf.* R.C. 126.07 (barring the director of the state Office of Budget and Management (OBM), who has the responsibility to pass on claims for payment from the state treasury, *see* note 3, *supra*, from approving payment from the state treasury if “insufficient evidentiary matter has been submitted”). It is equally evident that giving the power to decide what is sufficient documentation to the party seeking payment of an expense or other claim would circumvent the statutory scheme of fiscal controls and accountability that has been established to manage expenditures from the county treasury and safeguard public funds. *See State ex rel. Ferguson v. Maloon*, 172 Ohio St. at 347 (noting that the statute that governed out-of-state travel by state officers and employees, “makes necessary the filing of an application in writing and the approval thereof prior to the travel and requires the filing of vouchers and receipts subsequent to the travel. This makes possible, as well as mandatory, an accounting and an audit”); *State ex rel. Commissioners v. Guilbert*; *State ex rel. Flanagan v. McConnell*. *See also Crane Township ex rel. Stalter v. Secoy*, 103 Ohio St. 258, 132 N.E. 851 (1921); *State ex rel. Beverstock v. Merry*. Thus, the authority to establish what is sufficient “evidentiary material” must lie with the county auditor since it determines the extent to which she can fully perform her statutory duty, and is an integral part of the “cumulative safeguards” established by the General Assembly to protect the public treasury.

Furthermore, the auditor may require that the evidentiary material be sufficiently detailed to satisfy her that an expense is eligible for reimbursement. The level of detail needed to ensure compliance with a travel policy may depend upon the substance of that policy. (See discussion below.) For example, more detailed documentation would be

required to substantiate the propriety of an expenditure under a policy providing for the reimbursement of actual expenses than for one providing for per diem payments. Nonetheless, itemized invoices and receipts fall within the statutory definition of "evidentiary matter," and it is not unreasonable for an auditor to consider insufficient a credit card statement showing only the date, vendor, and amount of the expenditure. Although we cannot predict what a court might do in any particular case, the authorities discussed above suggest that, if the auditor is unable to determine whether the expenditure is for a proper purpose, a writ of mandamus will not lie. See *State ex rel. Krabach v. Ferguson*, 46 Ohio St. 2d at 175-76 ("the information required by the auditor is directly related to his duty to find that these claims are legal, since an examination of the slips themselves does not allow a finding that they represent purchases for state use," and the "auditor's disinclination to find these claims legal without further proofs which are readily available consequently has a reasonable basis and we cannot say that it was an abuse of his authority or of the limited nature of his discretion to request these proofs").

Therefore, it is within the authority of the county auditor to determine what constitutes sufficient evidentiary material, and to require that an itemized receipt or bill, rather than a credit card statement, be submitted as evidentiary material where necessary to satisfy her that an expense is eligible for reimbursement under an agency's travel policy.

### **Travel Policy**

You have also asked whether a county auditor has the authority to set travel policy for other county offices. The policy about which you ask, entitled "Warrant Payment Requirements," has three components, which we will discuss in turn: credit card use, documentation of expenditures, and expenditures for which reimbursement would be denied.

### **Credit Card Use**

The auditor's memorandum states that credit card use is limited to the work-related purposes listed in R.C. 301.27, and then specifies those purposes, as found in R.C. 301.27(B).<sup>7</sup> The memorandum further states that, a "purchase on a County Credit Card for personal purchases is fraud and violators will be prosecuted," and that, "[a]ll other credit card purchases will be denied payment by the Auditor's Office." The use of a county credit card for any purpose other than one permitted under division (B) of R.C. 301.27 is a violation of R.C. 2913.21, denominated "misuse of credit cards," R.C. 301.27(G), rather than "fraud." It is, nonetheless, a criminal offense which, depending upon the facts of a particular violation, is a first degree misdemeanor, or a third, fourth, or fifth degree felony. R.C. 2913.21(D).

This part of the auditor's memorandum is, therefore, a brief reiteration of the statutory restrictions on the use of county credit cards, to which all county officers and employees (and others) are subject, rather than a policy that has been independently developed and imposed by the auditor. The auditor is certainly permitted, as part of her responsibility to ensure that county funds are paid for a proper purpose, to remind county officers and employees of the requirements of the law and the consequences of failing to comply therewith.

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<sup>7</sup>For example, R.C. 301.27 permits a county credit card to be used to pay for food, transportation, telephone, and lodging, if the expenditures are work-related.

### Documentation

The auditor's memorandum also states that, "all warrants should be accompanied with detailed, itemized receipts," and that, "[s]ummarized invoices that do not include what was actually purchased will be refused and are not acceptable." It also states that, "[v]ouchers that are submitted without detailed receipts will be returned and not paid until proper documentation is provided." The establishment of a requirement that itemized receipts be submitted with requests for payment is within the auditor's authority, as discussed above.

### Denial of Reimbursement

The auditor's policy also states that: "The County may not reimburse for any tips or excessive charges for meals. The County will not reimburse for any charges for alcoholic beverages." It also states that "vouchers for bills that contain late fees or finance charges may be returned and not paid."

The county auditor has not, however, been given the statutory authority to prescribe the substance of a travel policy for offices other than her own. *Cf.* R.C. 126.31(B) (authorizing the director of OBM to enact rules governing the manner and rates of travel reimbursement for state officers and employees).<sup>8</sup> Rather, each county officer, board, or department may establish a travel policy for the agency's officers and employees. A board or appropriate office or department head has the discretion, subject to R.C. 325.20, to set the specific terms of the policy, including the amount of expenses that may be incurred, and the nature of the items that may be reimbursed. *See* 1993 Op. Att'y Gen. No. 93-066; 1975 Op. Att'y Gen. No. 75-008; 1951 Op. Att'y Gen. No. 690, p. 405.

Any travel policy must, of course, comply with the limitation that public funds may be spent only for a public purpose. *See State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 469 n.8, 423 N.E.2d 105 (1981); *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 98 N.E.2d 835 (1951); *Kohler v. Powell*, 115 Ohio St. 418, 425, 154 N.E. 340 (1926); 1986 Op. Att'y Gen. No. 86-086 at 2-489 n.1; 1983 Op. Att'y Gen. No. 83-029; 1982 Op. Att'y Gen. No. 82-006; 1981 Op. Att'y Gen. No. 81-040. Public funds may not be used to reimburse public officers and employees for personal expenses, expenses not reasonably necessary to the performance of their statutory duties, or expenses not actually incurred in the performance of their duties. 1993 Op. Att'y Gen. No. 93-066; 1981 Op. Att'y Gen. No. 81-040; 1975 Op. Att'y Gen. No. 75-008. *See, e.g.*, 2 Ohio Admin. Code 126-1-02(F) (2002-2003 Supp.) (state employees on travel status may not be reimbursed for laundry, dry cleaning, and personal telephone calls unless they are in overnight lodging for more than one week).

The determination of whether an expenditure constitutes a proper public purpose lies in the first instance with the agency adopting the policy and undertaking the expenditure, but the agency may not, in making this determination, abuse its discretion. *See State ex rel. Corrigan v. Seminatore*; *State ex rel. McClure v. Hagerman*; 1993 Op. Att'y Gen. No. 93-066; 1986 Op. Att'y Gen. No. 86-086; 1982 Op. Att'y Gen. No. 82-006. As discussed above, the county auditor is authorized to question the validity of claims for payment from the

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<sup>8</sup>Pursuant to division (B) of R.C. 126.31, a state officer or employee may be reimbursed for traveling or other expenses incurred while attending any meeting, conference, retreat, convention, or similar gathering, or while performing his official duties, if authorized by his state agency. Reimbursement must be made in accordance with rules adopted by the director of the Office of Budget and Management. *Id.* *See* 2 Ohio Admin. Code 126-1-02 (2002-2003 Supp.).

county treasury and may refuse payment of unlawful claims, including expenditures authorized by a public body in excess of “the legal bounds of [its] discretion.” 1961 Op. Att’y Gen. No. 1999 at 30. Thus, even though a county auditor is not authorized to establish travel policy for all county offices, she may refuse to reimburse a travel expense that does not constitute a proper public purpose made under a written policy adopted by a county agency in excess of its discretion.<sup>9</sup>

We emphasize that a written travel policy is essential to the protection of county funds and serves to guide an agency’s officers and employees. It is also necessary to the county auditor’s determination of whether a request for reimbursement should be paid. The provisions of an agency’s travel policy may, as noted above, affect the detail and substance of evidentiary matters that will be required by the auditor to evaluate whether an expenditure complies with that office’s policy.<sup>10</sup> For example, if a policy provides that tips are not reimbursable, the documentation provided with the claim must demonstrate that it does not include tips. Again, it is questionable whether a court would require the auditor to issue a warrant if she cannot determine whether payment is for a proper purpose.

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

1. A county auditor is authorized to examine a claim against the county treasury, including a claim for payment of travel expenses, to ensure that all statutory requirements have been met and the claim is proper in purpose and amount, before issuing a warrant in payment of the claim. The auditor has a duty to deny issuance of a warrant if these standards are not met, and a writ of mandamus will not lie to compel the auditor to issue a warrant unless the claimant has a clear legal right to payment.

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<sup>9</sup>Whether a particular expenditure serves a public purpose may, however, be subject to fair debate. Even the courts concede that, “[t]he problem of deciding what constitutes public purpose has always been difficult of solution.” *State ex rel. McClure v. Hagerman*, 155 Ohio St. at 324. See 1982 Op. Att’y Gen. No. 82-006 at 2-17 (“[u]nfortunately, the problem of deciding what constitutes a public purpose has always been difficult. The courts have attempted no absolute judicial definition of a public purpose but have left each case to be determined by its own peculiar circumstances”). As explained above, a county auditor’s refusal to issue a warrant in payment of a claim may be challenged through a writ of mandamus, and whether an expenditure fails to meet the “public purpose” standard, or an agency abused its discretion in authorizing the expenditure, are ultimately questions for the courts. Cf. R.C. 117.28 (authorizing an agency’s legal counsel or the Attorney General to institute a civil action to recover public money where an audit report issued by the Auditor of State includes a finding that public money has been illegally expended); R.C. 309.12 (authorizing a county prosecuting attorney to file a civil action to recover funds misapplied or illegally drawn from the county treasury).

<sup>10</sup>Furthermore, it is crucial that each county employer establish an “accountable plan,” as described in the Internal Revenue Code and regulations, for the reimbursement of employee expenses. Without an accountable plan, expense payments are includable in the gross income of agency employees, and are subject to withholding and employment taxes. 26 U.S.C. §§ 61, 62, 3402, 3403; 26 C.F.R. §§ 1.62-2, 31.3401(a)-4 (2003). See *generally Trucks, Inc. v. United States*, 234 F.3d 1340 (11th Cir. 2000).

2. The requirement of R.C. 325.20(A), that the board of county commissioners authorize in advance payment for county officers and employees to attend association meetings and conventions, does not preempt, or substitute for, the authority of the county auditor under R.C. 307.55 and R.C. 319.16 to determine, prior to issuing a warrant, the propriety of a request submitted by a county officer or employee for reimbursement of his travel expenses.
3. It is within the authority of the county auditor to determine what constitutes sufficient "evidentiary matter" for purposes of R.C. 319.16, and to require that requests for reimbursement of travel expenses be accompanied by itemized receipts rather than credit card statements where necessary to satisfy her that an expense is eligible for reimbursement under an agency's travel policy.
4. A county auditor does not have the authority to set a travel policy for county offices other than her own. Each county board and appropriate department or office head has the discretion to establish, for that agency's officers and employees, a written policy setting forth the type and amount of travel expenses that may be reimbursed by the county. A written travel policy is necessary to the county auditor's determination of whether a request for reimbursement should be paid. A written policy also serves to guide agency's officers and employees and is essential to the protection of county funds.