

**OPINION NO. 91-068****Syllabus:**

1. Pursuant to 1 Ohio Admin. Code 117-1-02, the compensation of a criminal bailiff and a court constable appointed under R.C. 2301.12(B) and R.C. 2701.07 by a court of common pleas located within a county operating under a cash system basis of accounting shall be paid from the appropriation made to the court of common pleas.
2. In a county operating under generally accepted accounting principles, the board of county commissioners may pay the compensation of a criminal bailiff and a court constable appointed pursuant to R.C. 2301.12(B) and R.C. 2701.07 by a court of common pleas by direct expenditure from the general fund or by appropriating moneys to the court of common pleas or the county sheriff for such purpose.

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**To: Charles F. Kennedy, III, Van Wert County Prosecuting Attorney, Van Wert, Ohio**

**By: Lee Fisher, Attorney General, December 31, 1991**

I have before me your request for my opinion concerning the salary of the criminal bailiff and the court constable of a court of common pleas. In particular, you ask:

[D]oes the criminal bailiff/court constable budget (salary) have a [separate] line item in the county budget/general fund as do the prosecutor, the sheriff, and the recorder, for example, or does this budget (salary) become a part of the common pleas court budget, the county sheriff's budget or a combination of common pleas and sheriff's budget[?]

**I. Compensation And Duties Of Criminal Bailiffs And Court Constables**

A criminal bailiff is appointed by the court of common pleas.<sup>1</sup> R.C. 2301.12(B). Upon appointment, the criminal bailiff becomes a deputy sheriff. 1931

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<sup>1</sup> "In counties where there are four or more judges of the court of common pleas, the judges of such court in joint session shall, instead of a criminal bailiff as provided in [R.C. 2301.12(B)], appoint a chief court constable." R.C. 2301.12(C). Since your letter of request asks only about criminal bailiffs appointed pursuant to R.C. 2301.12(B), I shall confine my analysis to a determination of how moneys are to be appropriated to compensate these bailiffs.

Op. Att'y Gen. No. 2959, vol. I, p. 261; see R.C. 2301.12(B). The compensation of the criminal bailiff is fixed by the court of common pleas and paid monthly from the county treasury upon the warrant of the county auditor. R.C. 2301.12(B). *But see* R.C. 2301.16.<sup>2</sup> The duties of a criminal bailiff are set forth in R.C. 2301.15:

The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county. Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. The criminal bailiff shall conduct prisoners to and from the jail of the county, and for that purpose, shall have access to the jail and to the courtroom, whenever ordered by such courts, and have care and charge of such prisoners when so doing. Under the direction of the sheriff, the criminal bailiff shall convey to the penitentiary all persons sentenced thereto. He shall receive and collect from the treasurer of state all costs in such criminal cases in the same manner as the sheriff is required to do, and pay the amount so collected to the sheriff of such county.

Court constables, like criminal bailiffs, are appointed by the court of common pleas, R.C. 2701.07, and are compensated an amount fixed by the court from the county treasury upon warrant of the county auditor, R.C. 2701.08. Pursuant to R.C. 2701.07, court constables are empowered

to preserve order, attend the assignment of cases in counties where more than two judges of the court of common pleas regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable has the same powers as sheriffs to call and impanel jurors, except in capital cases.

It is clear under R.C. 2301.12(B) and R.C. 2701.08 that the compensation of criminal bailiffs and court constables is paid from the county treasury. No statute, however, expressly states whether the compensation of court bailiffs and court constables is paid from those moneys within the county treasury appropriated to

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<sup>2</sup> A comparison of R.C. 2301.12(B) and R.C. 2301.16 reveals that the provisions of these two sections are inconsistent. Specifically, R.C. 2301.12(B) states that criminal bailiffs are to be compensated from the county treasury, while R.C. 2301.16 provides that such bailiffs are to be compensated from the fee fund. "Where two sections ... contain inconsistent provisions relating to the same subject-matter, the later enacted must prevail and the earlier is repealed by implication." *Western & Southern Indem. Co. v. Chicago Title & Trust Co.*, 128 Ohio St. 422, 191 N.E. 462 (1934) (syllabus, paragraph one); accord R.C. 1.52(A); *State ex rel. Bd. of Educ. v. Schumann*, 7 Ohio St. 2d 41, 44, 218 N.E.2d 180, 182 (1966). R.C. 2301.16 was originally enacted in 1879 in section four of "AN ACT Creating the office of criminal bailiff, and to prescribe his duties in counties of the first class having a population of one hundred and eighty thousand and upwards." 1879 Ohio Laws 54-55 (S.B. 201, passed Apr. 2, 1879). In 1910, the Ohio General Assembly adopted the General Code, which enacted, *inter alia*, G.C. 1541, the predecessor to current R.C. 2301.12. See S.B. 2, 78th Gen. A. (1910) (passed Feb. 14, 1910 and published in *The General Code of the State of Ohio, Commissioners of Public Printing 1910*). See generally 1910 Ohio Laws 39 (H.B. 348, passed Mar. 23, 1910) ("[t]he statutes shall be published by the state and shall be officially designated as 'The General Code'"); 1906 Ohio Laws 221 (S.B. 31, passed Apr. 2, 1906) ("[t]o provide for the revision and consolidation of the statute laws of Ohio"). R.C. 2301.12(B) was enacted after R.C. 2301.16 and, thus, to the extent that the two sections are inconsistent, prevails over R.C. 2301.16. R.C. 2301.12(B), therefore, has repealed by implication those provisions of R.C. 2301.16 concerning the payment of a criminal bailiff's compensation from the fee fund, and mandates that the compensation of a criminal bailiff is to be paid from the county treasury.

either the court of common pleas, the county sheriff, or the county, or from a combination of moneys appropriated to the court of common pleas and the county sheriff.<sup>3</sup> Resolution of your specific inquiry, therefore, requires an examination of the composition of the funds and accounts within a county treasury. See generally R.C. 5705.09 (requiring political subdivisions to establish certain funds); 1 Ohio Admin. Code 117-1-01(B) ("[t]he funds of each county shall be organized into the following: (1) General fund; (2) Special revenue funds; (3) Debt service funds; (4) Capital project funds; (5) Special assessment funds; (6) Enterprise funds; (7) Internal service funds; (8) Trust and agency funds").

## II. Basis Of Accounting

Pursuant to R.C. 117.43(A), the Auditor of State "may prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies." Under this statutory authority, the Auditor has adopted 1 Ohio Admin. Code 117-1-01(A), which authorizes a county to use either a cash basis system of accounting or generally accepted accounting principles. *But see generally* 1 Ohio Admin. Code 117-1-11(I) ("[f]or the fiscal year ending on december [sic] 31, 1992, and for each fiscal year thereafter, every county in the state of Ohio shall prepare its annual financial report in accordance with generally accepted accounting principles"). The composition of the funds and accounts within a county treasury depends upon the basis of accounting utilized by the county.

### A. Cash Basis System Of Accounting

A county operating under a cash basis system of accounting is required to "employ the uniform system of accounting prescribed pursuant to rules 117-1-01 to 117-1-11 of the Administrative Code." 1 Ohio Admin. Code 117-1-01(A). 1 Ohio Admin. Code 117-1-02, which sets forth the organization of the general fund and the accounts contained therein, includes the following:

RECEIPT/ DISBURSEMENT	ACCOUNT CLASSIFICATION	DESCRIPTION
....		
EXPENDITURES		
....		
COMMON PLEAS COURT		
....		
2. Salaries--Employee(s)	General government--judicial	Compensation of court appointed interpreters, criminal bailiffs, constables, psychiatrists, and administrative assistants, sections 2301.12(A), (B), (C), (D), (E), R.C.; annual per diem compensation for shorthand reporters and assistant shorthand reporters, section 2301.22, R.C.; annual compensation by assignment commissioners as prescribed by the court or courts appointing them, section 2335.03 and 2335.04, R.C. (Emphasis added).

<sup>3</sup> It appears from information provided that neither the county sheriff nor the court of common pleas has included within its request for an appropriation the compensation to be paid criminal bailiffs and court constables. See generally R.C. 307.01(B) (a court of common pleas is

The Auditor of State has thus prescribed that the compensation of criminal bailiffs and court constables<sup>4</sup> of a court of common pleas located within a county operating under a cash basis system of accounting is to be paid from the general government-judicial account of the general fund and has indicated that the compensation should be paid from the appropriation made to the court of common pleas. *See generally* R.C. 307.01(B) (a board of county commissioners shall appropriate to the court of common pleas an "amount of money each year that it determines ... is reasonably necessary to meet all administrative expenses of the court").<sup>5</sup> An administrative rule properly promulgated pursuant to statutory authority is given the force and effect of a statute. *Meyers v. State Lottery Comm'n*, 34 Ohio App. 3d 232, 234, 517 N.E.2d 1029, 1031 (Lucas County 1986). I find, accordingly, that pursuant to rule 117-1-02, the compensation of a criminal bailiff and a court constable appointed under R.C. 2301.12(B) and R.C. 2701.07 by a court of common pleas located within a county operating under a cash system basis of accounting shall be paid from the appropriation made to the court of common pleas.

#### B. Generally Accepted Accounting Principles

A county operating under generally accepted accounting principles is required to "employ those principles prescribed and/or adopted by the governmental

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required to "submit a written request for an appropriation to the board of county commissioners"; R.C. 5705.28(C)(1) (a county sheriff shall file with the board of county commissioners an estimate of contemplated expenditures). I shall, therefore, limit my analysis to those situations in which neither the county sheriff nor the court of common pleas has requested an appropriation to compensate the criminal bailiffs and court constables of a court of common pleas.

<sup>4</sup> The language of 1 Ohio Admin. Code 117-1-02 provides "constables" are to be paid from the general government-judicial account of the general fund and specifically cites to R.C. 2301.12 as the appointing statute. Except for the chief court constable, *see* R.C. 2301.12(C), court constables are appointed pursuant to R.C. 2701.07 and compensated pursuant to R.C. 2701.08. Hence, it might appear that court constables appointed pursuant to R.C. 2701.07 are not to be compensated from the general government-judicial account of the general fund insofar as 1 Ohio Admin. Code 117-1-02 does not specifically list court constables appointed under R.C. 2701.07 by a court of common pleas within the list of individuals who are paid their compensation from the general government-judicial account of the general fund. However, under the rule of statutory construction that statutes relating to the same matter or subject are *in pari materia*, *see State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two), it is clear that court constables appointed pursuant to R.C. 2701.07 are to be compensated from the general government-judicial account of the general fund. R.C. 2301.12 and R.C. 2701.07 are both concerned with the appointment of court personnel to enhance the efficient administration of justice. Further, constables appointed under R.C. 2701.07 perform substantially the same duties as those constables appointed under R.C. 2301.12(C). Consequently, it is reasonable to conclude that the term "constable," as used in rule 117-1-02 with regard to appropriations to be made to a court of common pleas, includes constables appointed under both R.C. 2301.12 and R.C. 2701.07.

<sup>5</sup> I note that R.C. 5707.02 authorizes a board of county commissioners to create a judicial and court fund and to expend the moneys deposited therein "for the payment of all the expenses, subject to section 307.01, 2101.11, or 2151.10 of the Revised Code, of the various courts of the county." A board of county commissioners, however, appropriates to a court of common pleas a sum of money necessary to meet all the administrative expenses of the court. R.C. 307.01(B). The plain language of these two sections, thus, reveals that a court of common pleas does not receive a disbursement of moneys from a judicial and court fund created under R.C. 5707.02, but rather receives, pursuant to R.C. 307.01(B), an appropriation for all of its administrative expenses from the general fund of the county.

accounting standards board of the financial accounting foundation." 1 Ohio Admin. Code 117-1-01(A). See generally R.C. 117.43(A) (rules promulgated by the Auditor of State "may refer to publications of government agencies or private organizations recommending systems or standards to be followed in governmental accounting and financial reporting"). One of the paramount principles adopted by the Governmental Accounting Standards Board provides:

A governmental accounting system must make it possible both:  
 (a) to present fairly and with full disclosure the financial position and results of financial operations of the funds and account groups of the governmental unit in conformity with generally accepted accounting principles, and (b) to determine and demonstrate compliance with finance-related legal and contractual provisions.

Governmental Accounting Standards Board, *Codification of Governmental Accounting and Financial Reporting Standards* 39 (3rd ed. 1990). Accordingly, the annual budget of a county must make full disclosure of the financial position and results of financial operations of the funds within the county treasury and demonstrate compliance with applicable sections of the Ohio Revised Code. See generally R.C. 5705.29 (mandating the contents of the tax budget); *Codification of Governmental Accounting and Financial Reporting Standards* 76 ("[t]he primary emphasis of the annual budgetary and appropriations process of most governmental units is on planning and controlling the financial operations of the governmental funds").

The question of precisely which moneys should be used to compensate criminal bailiffs and court constables appointed by a court of common pleas located within a county operating under generally accepted accounting principles is not addressed by statute or administrative rule. However, as noted above, the compensation of criminal bailiffs and court constables is paid from the county treasury. R.C. 2301.12(B); R.C. 2701.08. Further, "where provision is made by law for the expenditure of [moneys] from the county treasury, but where such law does not specify the particular fund therein to be charged, such payment should be made from the county general fund." 1954 Op. Att'y Gen. No. 3645, p. 143 at 146-47; accord 1937 Op. Att'y Gen. No. 710, vol. II, p. 1264 (syllabus, paragraph two). Hence, in a county operating under generally accepted accounting principles, the compensation of criminal bailiffs and court constables is paid from the general fund. See generally footnote five, *supra*.

Absent a statutory provision or administrative regulation specifying how moneys are to be appropriated from the general fund of the county treasury for a particular purpose, that determination remains a matter of accounting. See 1987 Op. Att'y Gen. No. 87-078. See generally 1954 Op. No. 3645. Consequently, a board of county commissioners may provide such compensation either by direct expenditure from the general fund, or by appropriating moneys to the court of common pleas or the county sheriff for such purpose. See 1985 Op. Att'y Gen. No. 85-066 at 2-249 (overruled in part on other grounds, 1991 Op. Att'y Gen. No. 91-008); 1983 Op. Att'y Gen. No. 83-053 at 2-212 and 2-213; 1954 Op. Att'y Gen. No. 4684, p. 694; see also 1974 Op. Att'y Gen. No. 74-032.

In making this decision, a board of county commissioners has a duty to exercise its authority and discretion in good faith and to use its best judgment with due regard to the circumstances and interests of the county and the accounting principles prescribed by the Governmental Accounting Standards Board. See generally *Brannon v. Board of Educ.*, 99 Ohio St. 369, 124 N.E. 235 (1919); *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 122 N.E. 39 (1918). In exercising this discretion, the board of county commissioners may consider any relevant factors, including, but not limited to, the actual duties performed by the criminal bailiff or the court constable, and the particular individual or entity on whose behalf those duties are rendered. I find, accordingly, that a board of county commissioners may pay the compensation of criminal bailiffs and court constables appointed pursuant to R.C. 2301.12(B) and R.C. 2701.07 by a court of common pleas by direct expenditure from the general fund, or by appropriating moneys to the court of common pleas or the county sheriff for such purpose.

**III. Conclusion**

Based upon the foregoing, it is my opinion and you are hereby advised that: —

1. Pursuant to 1 Ohio Admin. Code 117-1-02, the compensation of a criminal bailiff and a court constable appointed under R.C. 2301.12(B) and R.C. 2701.07 by a court of common pleas located within a county operating under a cash system basis of accounting shall be paid from the appropriation made to the court of common pleas. —
2. In a county operating under generally accepted accounting principles, the board of county commissioners may pay the compensation of a criminal bailiff and a court constable appointed pursuant to R.C. 2301.12(B) and R.C. 2701.07 by a court of common pleas by direct expenditure from the general fund or by appropriating moneys to the court of common pleas or the county sheriff for such purpose.