

June 13, 2012

The Honorable Daniel G. Padden
Guernsey County Prosecuting Attorney
139 West Eighth Street
P.O. Box 640
Cambridge, Ohio 43725-0640

SYLLABUS:

2012-019

1. A board of county commissioners may not charge the county veterans service commission rent for the use of office space in a county building. (2010 Op. Att'y Gen. No. 2010-001 (syllabus, paragraph 2) and 1986 Op. Att'y Gen. No. 86-104 (syllabus, paragraph 2), approved and followed.)
2. A county auditor may not appropriate funds to the county veterans service commission.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

June 13, 2012

OPINION NO. 2012-019

The Honorable Daniel G. Padden
Guernsey County Prosecuting Attorney
139 West Eighth Street
P.O. Box 640
Cambridge, Ohio 43725-0640

Dear Prosecutor Padden:

You have requested an opinion on the following questions regarding a county veterans service commission:

1. May a board of county commissioners charge the county veterans service commission rent for the use of office space in a county building?
2. May a county auditor appropriate funds to the county veterans service commission?

Each county has a veterans service commission typically consisting of five residents of the county. R.C. 5901.02. *But see* R.C. 5901.021(A), (B)(1) (the board of county commissioners of a county with a population over five hundred thousand may create up to six additional memberships on the veterans service commission). Veterans service commissions provide a variety of services for qualifying veterans and their family members, including financial assistance and burial and cremation services. *See* R.C. 5901.03; R.C. 5901.08-.09; R.C. 5901.14-.15; R.C. 5901.25-.32; *see also Lynch v. Gallia Cty. Bd. of Comm'rs*, 79 Ohio St. 3d 251, 258, 680 N.E.2d 1222 (1997) (veterans service commissions “are vested with a special public trust to see that those who have served our country receive a decent burial and are remembered with honor, and that they and their families are kept from indigency”). A veterans service commission is part of the county government. *See* 2008 Op. Att’y Gen. No. 2008-033, at 2-346; 2004 Op. Att’y Gen. No. 2004-034, at 2-311; 2004 Op. Att’y Gen. No. 2004-032, at 2-291; 1993 Op. Att’y Gen. No. 93-065, at 2-308 to 2-309.

R.C. 5901.11 requires a veterans service commission to meet each year to “determine in an itemized manner the probable amount necessary for the aid and financial assistance of persons entitled to such aid and assistance and for the operation of the veterans service office for the ensuing year.” The veterans service commission then prepares and submits a proposed budget in the manner specified in R.C. 5705.28(C) to the board of county commissioners. R.C. 5901.11; *see also* R.C. 5705.28(C)(1) (“each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority ... an estimate of

contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision”); R.C. 5901.03(D) (veterans service commission must submit its budget and the budget of the veterans service office to the board of county commissioners for approval). The board of county commissioners “may review the proposed budget” submitted by the veterans service commission. R.C. 5901.11. The board of county commissioners, however, “shall appropriate funds” to the veterans service commission pursuant to R.C. Title III, R.C. 5705.05, and R.C. 5705.38-41, and the board “shall make the necessary levy, not to exceed five-tenths of a mill,” to raise the amount approved by the board. *Id.*; *see also* 2008 Op. Att’y Gen. No. 2008-033, at 2-340 to 2-341.

The Ohio Supreme Court has interpreted R.C. 5901.11 to mean that a board of county commissioners must approve any lawful budget request by the veterans service commission up to the .5 mill limitation. *Lynch*, 79 Ohio St. 3d 251 (syllabus); *see also* 2008 Op. Att’y Gen. No. 2008-033, at 2-340 n.5 (“[e]xcept for the period between 1988 and 1994, the obligation of the county commissioners to provide funding in the amount requested by the [veterans service commission] (previously the soldiers’ relief commission), up to the .5 mill permitted by statute, has been found to be mandatory”). The tax levy for the benefit of a veterans service commission is part of the county general tax levy for current expenses within the 10-mill limitation that may be imposed without voter approval. *See* R.C. 5705.02; R.C. 5705.04(B); R.C. 5705.05(E); 2008 Op. Att’y Gen. No. 2008-033, at 2-341; 1983 Op. Att’y Gen. No. 83-032 (syllabus) (overruled in part, and on other grounds, by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment). Moneys that have been appropriated to a veterans service commission typically may be expended by the commission without additional approval by the board of county commissioners. 2008 Op. Att’y Gen. No. 2008-033, at 2-342; *see also* 1966 Op. Att’y Gen. No. 66-170, at 2-362 (overruled in part, and on other grounds, by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment).

Your first question asks whether a board of county commissioners may charge the veterans service commission rent for the use of office space in a county building. A board of county commissioners has a duty to provide county officers with office space and “such facilities as will result in expeditious and economical administration of such offices.” R.C. 307.01(A). This duty is mandatory. *See* 2010 Op. Att’y Gen. No. 2010-001 (syllabus, paragraph 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”); 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”). As noted previously, a veterans service commission is a branch of county government. *See* 2008 Op. Att’y Gen. No. 2008-033, at 2-346; 2004 Op. Att’y Gen. No. 2004-034, at 2-311; 2004 Op. Att’y Gen. No. 2004-032, at 2-291; 1993 Op. Att’y Gen. No. 93-065, at 2-308 to 2-309. Thus, a board of county commissioners has a mandatory duty to provide the veterans service commission with office space and appropriate facilities.

Under Ohio law, one governmental entity may not charge another governmental entity administrative fees or rent in the absence of statutory authority. *See* 2001 Op. Att’y Gen. No. 2001-024 (syllabus) (“[a] board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer, or for utility or rent expenses, unless there is

express statutory authorization for the charge or authority implied from an express power”); 1982 Op. Att’y Gen. No. 82-011 (syllabus, paragraph 1) (“[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”). Relying on this general principle, prior Attorney General opinions have concluded that a board of county commissioners may not charge rent for the office space it provides various county boards. *See* 2010 Op. Att’y Gen. No. 2010-001 (syllabus, paragraph 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”); 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”).

I find the preceding authority persuasive. Nothing in the Revised Code either expressly or impliedly authorizes a board of county commissioners to charge rent to the veterans service commission. Accordingly, a board of county commissioners may not charge the veterans service commission rent for the use of office space in a county building.

Your second question asks whether a county auditor may appropriate funds for the benefit of the veterans service commission.¹ The prior discussion regarding the funding of a veterans service commission makes clear that it is the board of county commissioners that approves the budget submitted by, and appropriates funds to, the veterans service commission. *See* R.C. 5705.28(C)(1); R.C. 5705.38-.41; R.C. 5901.03(D); R.C. 5901.11; 2008 Op. Att’y Gen. No. 2008-033, at 2-339 to 2-342. In addition, while Ohio law permits amended or supplemental appropriations, any amended or supplemental appropriation must “comply with all provisions of law governing the taxing authority in making an original appropriation.” R.C. 5705.40; *see also* R.C. 5705.38(A); 2011 Op. Att’y Gen. No. 2011-036, at 2-292. As the taxing authority for the county, the board of county commissioners is the entity that must approve an amended or supplemental appropriation for the benefit of the veterans service commission. *See* 2011 Op. Att’y Gen. No. 2011-036, at 2-292 (“a county recorder cannot receive and expend funds in addition to those originally appropriated unless the board of county commissioners passes an amended or supplemental appropriation to this effect under R.C. 5705.40”); *see also* 2000 Op. Att’y Gen. No. 2000-009, at 2-44; 1994 Op. Att’y Gen. No. 94-007 (syllabus).

Neither the Revised Code nor any other authority grants a county auditor the concurrent power to appropriate funds to the veterans service commission. Thus, a county auditor may not appropriate funds to the veterans service commission.

¹ Based on conversations between you and a member of my staff, it is my understanding that you are asking about the traditional appropriation process. You are not asking about the authority of a county auditor either to donate moneys to the county veterans service commission or to transfer moneys from one fund of the county to another fund. *See generally* 2011 Op. Att’y Gen. No. 2011-036, at 2-289 to 2-293.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. A board of county commissioners may not charge the county veterans service commission rent for the use of office space in a county building. (2010 Op. Att'y Gen. No. 2010-001 (syllabus, paragraph 2) and 1986 Op. Att'y Gen. No. 86-104 (syllabus, paragraph 2), approved and followed.)
2. A county auditor may not appropriate funds to the county veterans service commission.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General