

May 13, 2009

The Honorable Martin P. Votel
Preble County Prosecuting Attorney
101 East Main Street
Courthouse, 1st Floor
Eaton, Ohio 45320

SYLLABUS:

2009-014

1. A county family and children first council, rather than a county department of job and family services that serves as the administrative agent for the council, is responsible for funding reimbursements to the unemployment compensation fund when employees of the council are laid off.
2. Absent a statute, rule, or interagency agreement applicable to the operations of a county family and children first council that requires the council's administrative agent to fund the operations of the council, a county department of job and family services that serves as the administrative agent for the council is not responsible for paying the financial obligations of the council when the council has insufficient funds to draw on to fulfill its financial obligations.



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

May 13, 2009

OPINION NO. 2009-014

The Honorable Martin P. Votel
Preble County Prosecuting Attorney
101 East Main Street
Courthouse, 1st Floor
Eaton, Ohio 45320

Dear Prosecutor Votel:

You have requested an opinion concerning the financial responsibilities of an administrative agent for a county family and children first council (CFCFC).¹ Specifically, you ask:

1. Is a CFCFC or county department of job and family services (CDJFS) that serves as the administrative agent for the CFCFC responsible for funding reimbursements to the unemployment compensation fund when employees of the CFCFC are laid off?

¹ You have informed us that the county department of job and family services (CDJFS) has been designated as the administrative agent for the county family and children first council (CFCFC) in your county. *See* R.C. 121.37(B)(5)(a) (a CFCFC shall designate an administrative agent from among the following entities: (1) the board of alcohol, drug addiction, and mental health services, including a board of alcohol and drug addiction or a community mental health board if the county is served by separate boards; (2) the board of county commissioners; (3) any board of health of the county's city and general health districts; (4) the CDJFS; (5) the county agency responsible for the administration of children services pursuant to R.C. 5153.15; (6) the county board of mental retardation and developmental disabilities; (7) any of the county's boards of education or governing boards of educational service centers; or (8) the county's juvenile court). Because your questions concern the responsibilities of a CDJFS serving as the administrative agent for a CFCFC, this opinion does not consider situations in which another entity has been designated as the administrative agent for the CFCFC.

2. Is a CDJFS that serves as the administrative agent for a CFCFC responsible for paying the financial obligations of the CFCFC when the CFCFC has insufficient funds to draw on to fulfill its financial obligations?

Let us begin our discussion of your first question with a review of the relevant provisions of Ohio law governing the funding of the unemployment compensation fund by political subdivisions and their instrumentalities. R.C. 4141.242(A) requires political subdivisions and their instrumentalities to make contributions or payments in lieu of making contributions to the unemployment compensation fund. *See* R.C. 4141.23(A); R.C. 4141.25; 1982 Op. Att’y Gen. No. 82-041 at 2-117 and 2-118; *see also* R.C. 4141.01(A); R.C. 4141.01(L). In this regard, the statute provides:

On or after January 1, 1978, ... political subdivisions and their instrumentalities ... shall pay to the director of job and family services for deposit in the unemployment compensation fund an amount ... equal to the full amount of regular benefits, and the amount of extended benefits chargeable under the terms of [R.C. 4141.301], from that fund that is attributable to service in the employ of the public entity ..., under the same terms and conditions as required of nonprofit organizations electing reimbursing status under [R.C. 4141.241]; unless the public entity ... elects to pay contributions under [R.C. 4141.25], under the following conditions:

(1) Any public entity ... may elect, after December 31, 1977, to become liable for contribution payments, as set forth in [R.C. 4141.25], for a period of not less than two calendar years by filing with the director a written notice of its election.

(2) The effective date of the election to pay contributions shall be the first day of the first calendar quarter after the election is approved by the director and which is at least thirty days after the election notice was received.

Accordingly, except as provided in R.C. 4141.242(A), an instrumentality of a political subdivision is required to reimburse the unemployment compensation fund for the cost of benefits paid from the fund that are attributable to service in the employ of the instrumentality when the instrumentality lays off employees.

The terms “political subdivision” and “instrumentality” are to be given their usual and customary meanings when construing R.C. 4141.242. *See* R.C. 1.42. In common parlance, a “political subdivision” is “a limited geographical area of the State, within which a public agency is authorized to exercise some governmental function.” 1972 Op. Att’y Gen. No. 72-035 at 2-135; *see Black’s Law Dictionary* 1197 (8th ed. 2004). Furthermore, courts and prior Attorney General opinions have determined that, when the term “political subdivision” is left undefined in a statute, the term is commonly understood to include counties. *See W. Pa. Nat. Bank v. Ross*, 345 F.2d 525, 526 (6th Cir. 1965); 1982 Op. Att’y Gen. No. 82-024 at 2-72. Thus, for purposes of R.C. 4141.242, the term “political subdivision” includes counties.

An “instrumentality” is generally defined as “[a] means or agency through which a function of another entity is accomplished, such as a branch of a governing body.” *Black’s Law Dictionary* 814 (8th ed. 2004). Reading this definition in conjunction with the definition of “political subdivision” set forth above discloses that an entity through which a function of a county is exercised is an instrumentality of a political subdivision for purposes of R.C. 4141.242.

An examination of the statutory scheme pursuant to which it is organized and operates indicates that a CFCFC is an instrumentality of a political subdivision for purposes of R.C. 4141.242. By its enactment of R.C. 121.37(B), the General Assembly has required each county to establish a CFCFC to streamline and coordinate existing government services for families seeking services for their children.² R.C. 121.37(B)(2) further delineates the following duties a CFCFC must perform:

In seeking to fulfill its purpose, a [CFCFC] shall provide for the following:

- (a) Referrals to the cabinet council of those children for whom the [CFCFC] cannot provide adequate services;
- (b) Development and implementation of a process that annually evaluates and prioritizes services, fills service gaps where possible, and invents new approaches to achieve better results for families and children;
- (c) Participation in the development of a countywide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the “Individuals with Disabilities Education Act of 2004”;
- (d) Maintenance of an accountability system to monitor the [CFCFC’s] progress in achieving results for families and children;
- (e) Establishment of a mechanism to ensure ongoing input from a broad representation of families who are receiving services within the county system.

In addition, a CFCFC is required to develop and implement the following:

- (a) An interagency process to establish local indicators and monitor the county’s progress toward increasing child well-being in the county;

² Each CFCFC is composed of (1) officials from various public and private agencies and groups that operate within the county and fund, advocate, or provide services to children and families and (2) persons who are not employed by an agency represented on the CFCFC and whose families are or have received services from an agency represented on the CFCFC or another county’s CFCFC. *See* R.C. 121.37(B)(1) (setting forth the list of persons who must serve on a CFCFC and the persons who may be invited to serve on a CFCFC).

- (b) An interagency process to identify local priorities to increase child well-being....
- (c) An annual plan that identifies the county's interagency efforts to increase child well-being in the county.

R.C. 121.37(B)(3).

The language of R.C. 121.37(B) makes it clear that a CFCFC is a creation of a county that exercises statutory powers and responsibilities for the benefit of families and children in the county. The provisions of R.C. 121.37(B) also demonstrate that a CFCFC is the means through which a county provides for the well-being of, and furnishes governmental services to, these families and children. It follows, therefore, that a CFCFC is an entity through which a function of a county is exercised, and thus is an instrumentality of a political subdivision for purposes of R.C. 4141.242(A). This means that a CFCFC must comply with the provisions of R.C. 4141.242(A) when applicable.

R.C. 4141.242(A) applies to an instrumentality of a political subdivision when the instrumentality is an employer. *See* R.C. 4141.01(A)(1); R.C. 4141.242(H)(1); 10B Ohio Admin. Code 4141-3-05(A); 1982 Op. Att'y Gen. No. 82-041 at 2-117; 1976 Op. Att'y Gen. No. 76-040 (syllabus, paragraph 3). Except as otherwise provided by law, an instrumentality of a political subdivision is an employer when the instrumentality has the right to direct or control the performance of services provided to it by a person who performs the services for remuneration.³ *See* R.C. 4141.01(A)(1); R.C. 4141.01(B)(1); rule 4141-3-05(A).

Applying this principle in the context of persons hired by a CDJFS, as the administrative agent for a CFCFC,⁴ the language of R.C. 121.37(B)(5) and R.C. 4141.01(A)(2) leads to the conclusion that the CFCFC, rather than the CDJFS, is the employer of such persons for purposes of R.C. 4141.242(A). First, R.C. 121.37(B)(5) explicitly refers to persons hired by a CDJFS, as the administrative agent for a CFCFC, as "employees of the [CFCFC]." *See generally State ex rel. Jones v. Conrad*, 92 Ohio St. 3d 389, 392, 2001-Ohio-207, 750 N.E.2d 583 (2001) ("[t]he rule is that when the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply the rules of statutory interpretation").

³ An instrumentality of a political subdivision is not the employer of a person unless the person receives remuneration for performing services for the instrumentality. *See* R.C. 4141.01(A)(1); R.C. 4141.01(B)(1); R.C. 4141.24(D)(1); 10B Ohio Admin. Code 4141-3-05(A). For the purpose of this opinion, it is assumed that all persons hired by a CDJFS, as the administrative agent for a CFCFC, receive remuneration for performing services for the CFCFC.

⁴ R.C. 121.37(B)(5)(a) provides that a CDJFS, as the administrative agent for a CFCFC, "shall serve as the [CFCFC's] appointing authority for any employees of the [CFCFC]." In its capacity as the appointing authority for a CFCFC, a CDJFS is responsible for appointing and removing persons employed by the CFCFC. *See* R.C. 124.01(D).

Moreover, R.C. 121.37(B)(5) plainly provides that a CFCFC designates an administrative agent to act on its behalf in matters. These matters include, but are not limited to, hiring and firing the employees of the CFCFC; ensuring that all expenditures of the CFCFC are properly handled; entering into agreements and administering contracts to fulfill specific CFCFC business; providing financial stipends and reimbursements to family representatives for expenses related to CFCFC activity; and receiving, holding, applying, and disposing of gifts, grants, devises, or bequests of moneys, lands, or other property for the CFCFC. R.C. 121.37(B)(5). It is thus clear that all of the actions taken by a CDJFS, as the administrative agent for a CFCFC, are done on behalf of the CFCFC in an agency capacity.

Finally, R.C. 4141.01(A)(2) provides:

Each individual employed to perform or to assist in performing the work of any agent ... of an employer is employed by such employer for all the purposes of this chapter, whether such individual was hired or paid directly by such employer or by such agent ..., provided the employer had actual or constructive knowledge of the work. (Emphasis added.)

Because a CDJFS that serves as the administrative agent for a CFCFC acts as an agent for the CFCFC when hiring the employees of the CFCFC and the CFCFC is aware of such employees being hired to perform work on its behalf, R.C. 4141.01(A)(2) applies. Thus, pursuant to R.C. 4141.01(A)(2), a CFCFC, rather than a CDJFS, is the employer of persons hired by the CDJFS, as the administrative agent for the CFCFC.

As the employer of the employees of a CFCFC, the CFCFC is required to comply with the provisions of R.C. 4141.242(A). Accordingly, a CFCFC, rather than a CDJFS that serves as the administrative agent for the CFCFC, is responsible for funding reimbursements to the unemployment compensation fund when employees of the CFCFC are laid off.

Your second question asks whether a CDJFS that serves as the administrative agent for a CFCFC is responsible for paying the financial obligations of the CFCFC when the CFCFC has insufficient funds to draw on to fulfill its financial obligations. Nowhere in the Revised Code or Administrative Code is a CDJFS that serves as the administrative agent for a CFCFC required to fund the operations of, or stipends and reimbursements provided by, the CFCFC. Further, as a creature of statute, a CFCFC may not, absent a statute, rule, or interagency agreement applicable to the operations of the CFCFC that requires the CFCFC's administrative agent to fund the operations of the CFCFC, compel its administrative agent to pay the CFCFC's financial obligations.

Instead, "R.C. 121.37 contemplates that each [CFCFC] will have some unspecified sources of income from which to pay its expenses." 2002 Op. Att'y Gen. No. 2002-008 at 2-44 n.4; *see, e.g.*, R.C. 121.37(A)(2)(e); R.C. 121.371; R.C. 3109.17; R.C. 3109.172; R.C. 3109.18; 14 Ohio Admin. Code 5101:5-1-01. Therefore, absent a statute, rule, or interagency agreement applicable to the operations of a CFCFC that requires the CFCFC's administrative agent to fund the operations of the CFCFC, a CDJFS that serves as the administrative agent for a CFCFC is not

responsible for paying the financial obligations of the CFCFC when the CFCFC has insufficient funds to draw on to fulfill its financial obligations.

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

1. A county family and children first council, rather than a county department of job and family services that serves as the administrative agent for the council, is responsible for funding reimbursements to the unemployment compensation fund when employees of the council are laid off.
2. Absent a statute, rule, or interagency agreement applicable to the operations of a county family and children first council that requires the council's administrative agent to fund the operations of the council, a county department of job and family services that serves as the administrative agent for the council is not responsible for paying the financial obligations of the council when the council has insufficient funds to draw on to fulfill its financial obligations.

Respectfully,



RICHARD CORDRAY
Ohio Attorney General