

September 16, 2005

The Honorable Pat Story
Meigs County Prosecuting Attorney
117 West Second Street
Pomeroy, Ohio 45769

SYLLABUS:

2005-035

The Auditor of State has the discretion to determine whether a bank's "display history" of a withdrawal from a checking account reasonably and reliably describes a disbursement from the furtherance of justice allowance paid to a county prosecuting attorney under R.C. 325.12 for accounting and financial reporting purposes.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL

JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

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OPINION NO. 2005-035

The Honorable Pat Story
Meigs County Prosecuting Attorney
117 West Second Street
Pomeroy, Ohio 45769

Dear Prosecutor Story:

You have requested an opinion whether a bank's "display history" of a withdrawal from a checking account sufficiently describes for accounting and financial reporting purposes a disbursement from the furtherance of justice allowance paid to a county prosecuting attorney under R.C. 325.12. After considering your question, we conclude that the Auditor of State has the discretion to determine whether a bank's "display history" of a withdrawal from a checking account reasonably and reliably describes a disbursement from a prosecuting attorney's furtherance of justice allowance for accounting and financial reporting purposes. The basis for this conclusion is set forth in the following analysis.

R.C. 325.12, which establishes the furtherance of justice allowance for the county prosecuting attorney, provides, in part, as follows:¹

(A) Except for the prosecuting attorney of a county with a population of less than seventy thousand one, *there shall be allowed annually to the prosecuting attorney*, in addition to the prosecuting attorney's salary provided by

¹ We note that a furtherance of justice allowance is also provided to the county sheriff pursuant to R.C. 325.071:

There shall be allowed annually to the sheriff, in addition to all salary and allowances otherwise provided by law, an amount equal to one-half of the official salary allowed under [R.C. 325.06(A) and R.C. 325.18], to provide for expenses that the sheriff incurs in the performance of the sheriff's official duties and in the furtherance of justice. Upon the order of the sheriff, the county auditor shall draw the auditor's warrant on the county treasurer, payable to the sheriff or any other person as the order designates, for the amount the order requires. The amounts the order requires, not exceeding the amount provided by this section, shall be paid out of the general fund of the county.

[R.C. 325.11 and R.C. 325.18] and to the allowance provided for by [R.C. 309.06], *an amount equal to one-half of the official salary the prosecuting attorney receives, to provide for expenses the prosecuting attorney may incur in the performance of the prosecuting attorney's official duties and in the furtherance of justice.*

(B) *There shall be allowed annually to the prosecuting attorney of a county with a population of less than seventy thousand one, in addition to the prosecuting attorney's salary provided by [R.C. 325.11 and R.C. 325.18] and to the allowance provided for by [R.C. 309.06], an amount equal to one-half of the salary specified for a prosecuting attorney with a private practice under [R.C. 325.11 and R.C. 325.18], to provide for expenses the prosecuting attorney may incur in the performance of the prosecuting attorney's official duties and in the furtherance of justice.*

(C) Upon the order of the prosecuting attorney, the county auditor shall draw the county auditor's warrant on the county treasurer, *payable to the prosecuting attorney or any other person as the order designates*, for the amount the order requires, not exceeding the amount provided by division (A) or (B) of this section to be paid out of the general fund of the county. (Emphasis added.)

You have indicated that you have a checking account in which you deposit the furtherance of justice allowance disbursed to you under R.C. 325.12.² *See, e.g.,* 1916 Op. Att'y Gen. No. 1175, vol. I, p. 55, at 55-56 (“[t]he question of whether or not the prosecuting attorney shall take security for the deposit of any of [his furtherance of justice] fund when he draws it out of the treasury and places it in a bank is a matter personal to the prosecuting attorney alone”). *See generally* 1992 Op. Att'y Gen. No. 92-030 (a county prosecuting attorney may deposit mandatory drug fine moneys and moneys in a law enforcement trust fund into interest-bearing accounts). *See generally also* 1924 Op. Att'y Gen. No. 1706, vol. I, p. 466, at 468 (“the prosecuting attorney may draw [his allowance under G.C. 3004 (now R.C. 325.12)] as a whole from the treasury or may pay it out by drawing upon the treasurer for such sums as may be expended by him from time to time”). In the past the bank with which you have the checking account has returned to you original paper checks paid from the account or photocopies of original paper checks paid from the account.³ You then use these items to document

² It is assumed, for the purpose of this opinion, that you deposit only your furtherance of justice allowance into the checking account.

³ R.C. 1304.35, which imposes a duty upon bank customers to discover unauthorized payments from their checking accounts, requires a bank to do the following:

(A) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of

expenditures from your furtherance of justice allowance and to prepare and file with the county auditor an itemized statement of those expenditures.⁴

account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(B) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

⁴ Neither the Ohio Revised Code nor the Ohio Administrative Code sets forth the manner in which a county prosecuting attorney is to document expenditures from his furtherance of justice allowance. 1989 Op. Att’y Gen. No. 89-090 at 2-430 (modified, in part, on other grounds by 1990 Op. Att’y Gen. No. 90-022). As a result, a county prosecuting attorney may exercise his discretion in determining the manner by which to document such expenditures. *See, e.g., State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”); 2004 Op. Att’y Gen. No. 2004-032 at 2-294 (“the prosecuting attorney must exercise discretion in determining the manner in which to meet [his] various obligations”).

R.C. 325.12(E) does, however, require a county prosecuting attorney to annually prepare and file with the county auditor an itemized statement of his expenditures from his furtherance of justice allowance:

The prosecuting attorney shall, annually, before the first Monday of January, file with the auditor an itemized statement, verified by the prosecuting attorney, as to the manner in which the fund provided by [R.C. 325.12] has been expended during the current year, and, if any part of that fund remains in the prosecuting attorney’s hands unexpended, forthwith shall pay the remainder into the county treasury.

In order to prepare this statement, a county prosecuting attorney must document expenditures from his furtherance of justice allowance in a manner that enables him to accurately account for all of the moneys disbursed by him under R.C. 325.12. *See State v. Kearns*, 165 Ohio St. 573, 578, 138 N.E.2d 650 (1956) (“[t]he duty to account provided for in [R.C. 325.12] is not inconsistent with a conclusion that the prosecutor receives money paid under the statute as a trustee. A trustee is always under a duty to account with respect to property or money received

However, because of recent changes in federal law pertaining to the check collection process, there are instances in which the bank is no longer able to return to you an original paper check or a photocopy of an original paper check.⁵ Instead, the bank is able to provide you with

by him as trustee”). *See generally* 2 Ohio Admin. Code 117-2-02(A) (“[a]ll local public offices shall maintain an accounting system and accounting methods sufficient to enable the public office to identify, assemble, analyze, classify, record and report its transactions, maintain accountability for the related assets (and liabilities, if generally accepted accounting principles apply), document compliance with finance-related legal and contractual requirements and prepare financial statements required by [2 Ohio Admin. Code 117-2-03]”). Accordingly, the manner in which a county prosecuting attorney documents expenditures from his furtherance of justice allowance must provide a reasonable and reliable means by which the prosecuting attorney may support the information he sets forth in the itemized statement he files with the county auditor under R.C. 325.12. *See generally* rule 117-2-02(B) (“[t]he management of each local public office is responsible for the assertions underlying the information in the public offices financial statements”); Warren Ruppel, *Wiley GAAP for Governments 2005, Interpretation and Application of Generally Accepted Accounting Principles for State and Local Governments* 75 (2005) (“information presented in financial reports should be verifiable”). *See generally also* R.C. 117.38 (“[e]very county agency, board, or commission shall provide to the county auditor, not later than the first day of March each year unless a later date is authorized by the county auditor, all information determined by the county auditor to be necessary for the preparation of the [annual financial] report required by this section”).

⁵ Pursuant to 12 U.S.C. §§ 5001-18, which is known as the “Check Clearing for the 21st Century Act” or “Check 21 Act,” the United States Congress has facilitated “check truncation by authorizing substitute checks” and fostered “innovation in the check collection system without mandating receipt of checks in electronic form.” 12 U.S.C. § 5001(b). *See generally* 12 U.S.C. § 4008(f)(1) (“[t]he Board [of Governors of the Federal Reserve System] shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item”). In light of the provisions of 12 U.S.C. §§ 5001-18, an original paper check is no longer required to be delivered during the check collection process to the bank upon which it is drawn. *See generally* 12 U.S.C. § 5002(18) (as used in 12 U.S.C. §§ 5001-18, “[t]he term ‘truncate’ means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the [magnetic ink character recognition] line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check”); 12 U.S.C. § 5015(a)(1) (in order to evaluate the implementation and impact of 12 U.S.C. §§ 5001-18, the Board of Governors of the Federal Reserve System shall conduct a study

only a “display history” of a withdrawal from your checking account. Information on a bank’s “display history” typically includes, but is not limited to, the number of the account upon which the check is drawn, routing information, the person or entity to whom the check was made payable, the purpose for which the money was paid, and the amount paid to the person or entity.

Because a bank’s “display history” of a withdrawal from a checking account sets forth the same information that appears on an original paper check or a photocopy of an original paper check, such a “display history,” like an original paper check or photocopy of an original paper check, may provide a reasonable and reliable means by which a county prosecuting attorney can accurately account for a disbursement from his furtherance of justice allowance. *See* note four, *supra*. *See generally* 2 Ohio Admin. Code 117-2-02(D) (“[a]ll local public offices may maintain accounting records in a manual or computerized format... Such records should include the following: (1) Cash journal, which typically contains the following information: the amount, date, receipt number, check number, account code, purchase order number, and any other information necessary to properly classify the transaction”). *See generally also* rule 117-2-02(D)(4)(a) (the payroll records of a local public office should include “[c]heck register that includes, in numerical sequence, the check number, payee, net amount, and the date”).

A final, authoritative determination whether a bank’s “display history” of a withdrawal from a checking account reasonably and reliably describes a disbursement from a county prosecuting attorney’s furtherance of justice allowance for accounting and financial reporting purposes, however, is not one that can be made by the Attorney General. Instead, this determination must be made by the Auditor of State since that officer is vested by statute with the authority to “prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies.”⁶ R.C. 117.43(A); *see* 1989 Op. Att’y Gen. No. 89-090 at 2-431 (modified, in part, on other grounds by 1990 Op. Att’y Gen. No. 90-022) (“whether the

of “the percentage of total checks cleared in which the paper check is not returned to the paying bank”).

⁶ Rules adopted pursuant to R.C. 117.43 that prescribe requirements for accounting and financial reporting for public offices other than state agencies “may refer to publications of government agencies or private organizations recommending systems or standards to be followed in governmental accounting and financial reporting.” R.C. 117.43(A). Pursuant to this statutory grant of authority, the Auditor of State has adopted and promulgated 2 Ohio Admin. Code 117-2-03(B), which requires counties, cities, and school districts to “file their annual financial reports [required by R.C. 117.38] pursuant to generally accepted accounting principles.” *See generally* [2004-2005 Monthly Record] Ohio Admin. Code 4701-9-04(E) at 924 (“[g]enerally accepted accounting principles for state and local government entities are defined as ‘Original Pronouncements: Governmental Accounting and Financial Reporting Standards’ and ‘Codification of Governmental Accounting and Financial Reporting Standards’ published by the ‘Governmental Accounting Standards Board’ as of June 30, 2003”).

accounting method utilized by a county prosecutor for his furtherance of justice fund satisfies the auditor of state with regard to mandatory drug fines disbursed to a prosecutor, pursuant to R.C. 2925.03(J), is a determination for the auditor of state”); *see also* R.C. 117.38 (“[e]ach public office, other than a state agency, shall file a financial report for each fiscal year. The auditor of state may prescribe forms by rule or may issue guidelines, or both, for such reports”). In addition, R.C. 117.20(C) provides:

Notwithstanding any contrary provision of the Revised Code, *the auditor of state may prepare and disseminate*, to public offices and other interested persons and organizations, *advisory bulletins, directives, and instructions relating to accounting and financial reporting systems*, budgeting procedures, fiscal controls, and the constructions by the auditor of state of constitutional and statutory provisions, court decisions, and opinions of the attorney general. The bulletins, directives, and instructions shall be of an advisory nature only. (Emphasis added.)

Because the Auditor of State is statutorily authorized to advise county officials about the requirements of accounting and financial reporting, we believe that it is proper for that office to determine whether a bank’s “display history” of a withdrawal from a checking account reasonably and reliably describes a disbursement from a county prosecuting attorney’s furtherance of justice allowance for accounting and financial reporting purposes. *See, e.g.*, 1989 Op. Att’y Gen. No. 89-090 at 2-430 (“whether a particular accounting method satisfies the accounting procedures of the auditor of state with regard to mandatory drug fines disbursed to a prosecutor, pursuant to R.C. 2925.03(J), is a question which cannot properly be answered by means of an Opinion of the Attorney General”); 1979 Op. Att’y Gen. No. 79-110 at 2-356 (“[t]he actual question that you present is whether or not your proposed fixed fee assessment will satisfy the accounting and reporting procedures prescribed by the chief inspector and supervision of public offices [now auditor of state, *see* 1985-1986 Ohio Laws, Part I, 1760, 1796 (Sub. H.B. 201, eff. July 1, 1985); *see also* R.C. 117.09] and I am not in a position to answer that question”). *See generally* 1987 Op. Att’y Gen. No. 87-033 (syllabus, paragraph three) (“[t]he Attorney General will abstain from rendering an opinion where another governmental entity has been granted the authority to render advisory opinions concerning the relevant subject matter”). We, therefore, recommend that you discuss with the Auditor of State whether a bank’s “display history” of a withdrawal from a checking account reasonably and reliably documents a disbursement from your furtherance of justice allowance for accounting and financial reporting purposes.⁷ *See generally* 1989 Op. Att’y Gen. No. 89-090 at 2-431 n.4 (a county prosecuting

⁷ Your letter requesting our advice was also addressed to the Auditor of State, and requested her opinion on this matter. It is significant to note, however, that Auditor of State Bulletin No. 2004-010 addresses the effect 12 U.S.C. §§ 5001-18, which is known as the “Check Clearing for the 21st Century Act” or “Check 21 Act,” will have on the accounting and financial reporting practices of public offices. While the bulletin is not dispositive of your specific

attorney “may request the auditor of state for a directive or instructions as to what accounting method is appropriate for mandatory drug fines distributed to [his] office, pursuant to R.C. 2925.03(J)”.

For the reasons discussed above, it is my opinion, and you are advised that the Auditor of State has the discretion to determine whether a bank’s “display history” of a withdrawal from a checking account reasonably and reliably describes a disbursement from the furtherance of justice allowance paid to a county prosecuting attorney under R.C. 325.12 for accounting and financial reporting purposes.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General

question, it does provide guidance and practical assistance to public offices that no longer receive original paper checks paid from an account or photocopies of original paper checks paid from an account.