

June 5, 2006

David H. Bodiker  
State Public Defender  
8 East Long Street  
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SYLLABUS:

2006-025

A county auditor has the authority, pursuant to R.C. 120.33(A)(4) and R.C. 319.16, to issue a warrant to pay the fees and expenses of court-appointed legal counsel, who sign and file their requests for payment and supporting documents electronically under a system developed by the State Public Defender, so long as the auditor, the court, and other parties to the transaction comply with R.C. Chapter 304 and R.C. Chapter 1306. The State Public Defender, however, cannot compel county auditors or courts to participate in an electronic filing system.



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OPINION NO. 2006-025

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Dear Public Defender Bodiker:

You have asked about the ability of counties to use an on-line system developed by your office to assist them process payments to court-appointed counsel. You have explained that, your office is developing a system where legal counsel, appointed by a court to represent indigent defendants, could electronically sign and submit to the county a request for payment of their fees and expenses, using an electronic version of what is now a paper document, entitled "Motion, Entry and Certification for Appointed Counsel Fees" ("Motion, Entry and Certification"). Counsel would also be able to submit electronically scanned copies of receipts or other evidence of payment, such as credit card statements, to justify reimbursement of their expenses. Your specific question is whether a county auditor has the authority to issue a warrant to pay the fees and expenses of court-appointed counsel who use the electronic filing system.

We conclude that a county auditor does have such authority, and begin with an examination of Ohio's public defender system before turning to the statutory authority of county auditors to explain our conclusion.

### **Public Defender System**

The General Assembly has established a public defender system to provide legal representation to indigent adults and juveniles who are charged with committing an act or offense that could lead to a loss of their liberty. *See* R.C. 120.06; R.C. 120.16; R.C. 120.26; R.C. 120.33. In addition to creating the Ohio Public Defender Commission and the office of the State Public Defender, *see* R.C. 120.01; R.C. 120.03; R.C. 120.04, R.C. Chapter 120 authorizes boards of county commissioners to establish a public defender program, by using one of several alternatives, including establishment of an "appointed counsel" system.<sup>1</sup>

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<sup>1</sup> In lieu of creating an appointed counsel system, a board of county commissioners may establish a county public defender commission, which appoints a county public defender, R.C. 120.13-18, or join with other counties to establish a joint county public defender commission,

Under an appointed counsel system, counsel is either selected by the indigent person charged with an offense or appointed by the court, and is paid by the county, R.C. 120.33. The board of county commissioners establishes a schedule of fees for counsel, on either an hourly basis, or by case. R.C. 120.33(A)(3). The court must approve counsel's fees and expenses before he can be paid by the county; counsel's fees and expenses are not taxed as costs. R.C. 120.33(A)(4). *See also* R.C. 120.33(A)(4) (“[c]ompensation and expenses [paid to appointed counsel] shall not exceed the amounts fixed by the board of county commissioners in the schedule adopted pursuant to division (A)(3) of this section. No court shall approve compensation and expenses that exceed the amount fixed pursuant to division (A)(3) of this section”). The board of county commissioners may seek reimbursement from the State Public Defender for fifty percent of the total cost of the county's appointed counsel system. R.C. 120.33(A)(4). *See also* R.C. 120.34 (requiring a pro rata reduction in the amount of reimbursement to each county where the amount appropriated by the General Assembly is insufficient to pay fifty percent of the total cost of all county appointed counsel systems, county public defender offices, and joint county public defender offices).

The State Public Defender is required to establish standards and guidelines for reimbursing counties that operate an appointed counsel system. R.C. 120.04(B)(7). He is charged with administering R.C. 120.33, which provides for the appointed counsel system, and making reimbursements pursuant thereto, R.C. 120.04(B)(10). *See also* R.C. 120.33(A)(5) (if a county's appointed counsel system fails to maintain the standards established by the Ohio Public Defender Commission and State Public Defender, and the county fails to correct the deficiencies after notification of such, the State Public Defender may deny all or part of the county's reimbursement from the State). The duty to perform these responsibilities, along with the authority to “[p]rescribe any forms that are necessary for the uniform operation” of R.C. Chapter 120, R.C. 120.04(C)(6), clearly empower the State Public Defender to develop a system whereby requests submitted for the payment of appointed counsels' fees and expenses are processed electronically by the counties.<sup>2</sup>

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which appoints a joint county public defender, R.C. 120.23-.28. Under a fourth option, a board of county commissioners may contract with the State Public Defender to represent indigent persons. R.C. 120.33(B).

<sup>2</sup> R.C. 1306.20 and R.C. 1306.21, which are part of the uniform electronic transactions act, discussed *infra*, govern the creation, communication, and use of, and reliance upon, electronic records and electronic signatures by state agencies, and authorize the state Department of Administrative Services to adopt rules relating thereto. *See* 2 Ohio Admin. Code 123:3-1-01. As a state agency, the State Public Defender's office must, of course, comply with all pertinent statutory and administrative requirements in developing and implementing an electronic filing system. *See generally State ex rel. Beacon Publishing Co. v. Bodiker*, 134 Ohio App. 3d 415, 731 N.E.2d 245 (Franklin County 1999).

We turn now to your question whether county auditors have the authority to issue warrants to pay the fees and expenses of appointed counsel who submit electronically their requests for payment and expense receipts.

### **Authority of the County Auditor**

Under the statutory scheme for payment of court-appointed counsel, the county auditor is required to “draw a warrant on the county treasurer for the payment of counsel in the amount fixed by the court, plus the expenses the court fixes and certifies to the auditor.” R.C. 120.33(A)(4). This provision must be read together with the duty imposed generally on the county auditor to issue a warrant on the county treasurer, upon allowance of a claim by the board of county commissioners or other officer authorized by law to do so—in this instance, the court—and “upon presentation of the proper order or voucher and evidentiary matter for the moneys” (emphasis added). R.C. 319.16.<sup>3</sup> Accord R.C. 307.55. “Evidentiary matters” include “original invoices, receipts, bills and checks, and legible copies of contracts.” R.C. 319.16. You have asked whether the county auditor may accept as proper “evidentiary matters” an appointed counsel’s electronically filed application for payment of his fees and expenses—the “Motion, Entry and Certification”<sup>4</sup>—and scanned copies of receipts or other evidence of payment.

2003 Op. Att’y Gen. No. 2003-029 examined the authority of a county auditor to prescribe the particularity of detail that evidentiary matters must include to enable her to properly substantiate the propriety of expenses presented to her for payment, stating that, the “authority to determine what constitutes sufficient ‘evidentiary material’ is necessarily implied from the auditor’s statutory duty to issue warrants upon proper claims.” *Id.*, at 2-246. The opinion reasoned that, 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.” *Id.* Similarly, a county auditor has the authority to prescribe the appropriate format or formats in which applications for payment and supporting receipts must be presented to her so that she can fully and properly perform her duty to determine whether to issue a warrant. If a county auditor finds that she is able to substantiate sufficiently the propriety of paying fees and expenses where “evidentiary matters” are presented to her in an electronic format, she has the

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<sup>3</sup> See *Bobb v. Marchant*, 14 Ohio St. 3d 1, 3, 469 N.E.2d 847 (1984) (“[s]tatutes relating to the same subject matter should be construed *in pari materia*, although they were enacted at different sessions of the General Assembly” (citation omitted)).

<sup>4</sup> The “Motion, Entry and Certification for Appointed Counsel Fees” (“Motion, Entry and Certification”) includes not only “evidentiary matters,” but the court’s order allowing an attorney’s claims for fees and expenses, and certifying the claims to the county auditor for payment, as required by R.C. 319.16 and R.C. 120.33(A)(4). See 1983 Op. Att’y Gen. No. 83-075 at 2-313 (“[t]he ‘proper order’ referred to in R.C. 319.16 may be a judgment entry of the court in which costs are ordered to be paid by one or more parties to an action”). See also note 6, *infra*.

discretion to accept electronic transmissions of applications for payment, signed electronically, and scanned copies of receipts or other evidence of payment.<sup>5</sup>

As set forth above, an evidentiary matter “*includes original* invoices, receipts, bills and checks” (emphasis added). R.C. 319.16. Even if a county auditor agrees to allow the electronic submission of documentation, she retains the discretion to require submission of original records. However, the authority of the auditor to require original documentation does not preclude her from accepting copies of evidentiary matters, including electronic copies, when she finds it to be sufficient and expedient to the proper performance of her duties.

### **Uniform Electronic Transactions Act**

Our conclusion that a county auditor has the authority to accept electronically signed and filed applications, and copies of scanned receipts, as “evidentiary matters” for purposes of R.C. 319.16 is supported by R.C. Chapters 1306 and 304, which recognize the legitimacy of conducting business, including county-conducted business, electronically. *See also* note 5, *supra*. R.C. Chapter 1306, the “uniform electronic transactions act,” sanctions the use of electronic filings and electronic signatures, so long as the parties to a transaction have agreed to conduct the transaction by electronic means, R.C. 1306.04(B), and otherwise comply with all statutory requirements. *See* R.C. 1306.01(P) (defining “transaction” as “an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or *governmental affairs*”) (emphasis added).

For example, a “record or signature may not be denied legal effect or enforceability solely because it is in electronic form,” R.C. 1306.06(A). An electronic record satisfies a law requiring a record to be in writing, R.C. 1306.06(C), and an electronic signature satisfies a law requiring a signature, R.C. 1306.06(D). *See also* R.C. 1306.10 (“[i]f a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts ... is attached to or logically associated with the signature or record”); R.C. 1306.12 (“evidence of a record or signature may not be excluded solely because it is in electronic form”). An electronic record that is capable of being retained—that is, of being printed or stored—by the recipient at the time of receipt satisfies a law requiring a person to “provide, send, or deliver information in writing to

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<sup>5</sup> County auditors have express statutory authority to *pay* county obligations electronically. *See* R.C. 9.37(F) (“[p]ursuant to sections 307.55, 319.16, and 321.15 of the Revised Code, a county auditor may issue, and a county treasurer may redeem, *electronic warrants authorizing direct deposit for payment of county obligations* in accordance with rules adopted by the auditor of the state pursuant to section 117.20 of the Revised Code”) (emphasis added); R.C. 319.16 (authorizing a county auditor to issue “electronic warrants authorizing direct deposit for payment of county obligations in accordance with [R.C. 9.37(F)]”); R.C. 321.16(B) (an auditor’s warrant and “all information related to the presentment of the warrant, may be provided electronically to the county treasurer”).

another person,” R.C. 1306.07(A). *See also* R.C. 1306.11 (satisfying requirements that records be retained); R.C. 1306.14 (when an electronic record is deemed sent and received); R.C. 1306.18 (compliance with security procedures); R.C. 1306.20 (use of electronic records and electronic signatures by state agencies).

### **R.C. Chapter 304—Use of Electronic Records and Signatures by County Offices**

R.C. Chapter 304 governs the use of electronic records and signatures by county offices specifically. R.C. 304.03(A) provides that, “[w]henver any rule or law requires or authorizes the filing of any information, notice, lien, or other document or record with any county office, a filing made by an electronic record shall have the same force and effect as a filing made on paper in all cases where the county office has authorized or agreed to the electronic filing and the filing is made in accordance with applicable rules or an applicable agreement.” Before a county office may use electronic records and electronic signatures, however, the office must adopt a written security procedure for verifying that an electronic record or signature is that of a specific person or “for detecting changes or errors in the information in an electronic record.” R.C. 304.02. *See* R.C. 117.111 (“[i]f a county office uses electronic records and electronic signatures under [R.C. Chapter 1306],” the auditor of state must, in conducting an audit, “inquire into the method, accuracy, and effectiveness of any security procedure adopted by that office under [R.C. 304.02]”).

### **County’s Participation Must Be Voluntary**

R.C. 304.04 makes explicit that nothing in R.C. Chapter 304 or R.C. Chapter 1306 *requires* county offices to “use or permit the use of electronic records and electronic signatures.” *See also* R.C. 1306.04(A) (R.C. Chapter 1306 does “not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form”). Furthermore, nothing in R.C. Chapter 120 authorizes the State Public Defender’s office to mandate participation in an electronic filing system. Therefore, a county auditor must voluntarily agree to accept and process for payment electronic filings from appointed counsel; the State Public Defender’s Office may not compel county auditors to do so.<sup>6</sup>

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<sup>6</sup> Although you have specifically asked about the authority of county auditors to participate in the proposed electronic filing system, a county’s common pleas court is also a necessary participant. As discussed above, appointed counsel receive only the fees and expenses that are approved by the court, and the county auditor may issue a warrant for the payment of counsel’s fees and expenses only in the amount fixed and certified by the court. R.C. 120.33(A)(4). Under the proposed system, an attorney would, after completing a “Motion, Entry and Certification,” electronically sign and forward it and scanned expense receipts to the court, where the judge would affix on the “Motion, Entry and Certification” his electronic signature fixing and certifying counsel’s fee and expenses (if approved) and ordering payment by the auditor; he also may electronically enter other information on the document, such as the total amount approved.

In conclusion, it is my opinion, and you are advised that, a county auditor has the authority, pursuant to R.C. 120.33(A)(4) and R.C. 319.16, to issue a warrant to pay the fees and expenses of court-appointed legal counsel, who sign and file their requests for payment and supporting documents electronically under a system developed by the State Public Defender, so long as the auditor, the court, and other parties to the transaction comply with R.C. Chapter 304 and R.C. Chapter 1306. The State Public Defender, however, cannot compel county auditors or courts to participate in an electronic filing system.

Respectfully,

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

JIM PETRO  
Attorney General

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The court would then electronically submit the “Motion, Entry and Certification” and supporting receipts to the county auditor for payment. As with evidentiary matters, the county auditor could accept a judge’s order and certification electronically. The participation of the court, like the county auditor’s, however, must be voluntary and in accordance with R.C. Chapters 1306 and 304.