May 29, 2012

The Honorable Daniel R. Lutz
Wayne County Prosecuting Attorney
115 West Liberty Street
Wooster, Ohio 44691

SYLLABUS: 2012-016

1. A county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices may not use a processor of financial transaction devices to accept (1) money confiscated during the commitment of a person to the county jail, (2) money for a prisoner's inmate account, or (3) bail.

2. A county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices may use a processor of financial transaction devices to accept (1) money for property sold at a sheriff's sale, (2) payment of the fee for a license to carry a concealed handgun, or (3) payment of the fee for making a standard fingerprint impression sheet.

3. A processor of financial transaction devices may not charge a person who uses a financial transaction device to make a payment to the county sheriff's office a surcharge or convenience fee that exceeds the surcharge or convenience fee established by a board of county commissioners pursuant to R.C. 301.28(E).

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

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OPINION NO. 2012-016

The Honorable Daniel R. Lutz
Wayne County Prosecuting Attorney
115 West Liberty Street
Wooster, Ohio 44691

Dear Prosecutor Lutz:

We have received your request for an opinion regarding the authority of a county sheriff to accept payments by financial transaction devices. You have informed us that on July 29, 2009, the board of county commissioners adopted a resolution in accordance with R.C. 301.28 authorizing the county sheriff to accept payments by financial transaction devices for county expenses.[1] Prior to the enactment of this resolution, the county sheriff did not accept payments by financial transaction devices.[2]

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[1] R.C. 301.28(B) states that a board of county commissioners may adopt a resolution authorizing the acceptance of payments by financial transaction devices for county expenses. For purposes of R.C. 301.28, a "financial transaction device" is

> a credit card, debit card, charge card, or prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check entry that includes, but is not limited to, accounts receivable and internet-initiated, point of purchase, and telephone-initiated applications or any other device or method for making an electronic payment or transfer of funds.

R.C. 301.28(A)(1).

[2] Your inquiry concerns the authority of a county sheriff to accept payments by financial transaction devices under a resolution adopted by a board of county commissioners pursuant to R.C. 301.28. This opinion does not consider the authority of a county sheriff to accept payments by financial transaction devices when the sheriff is not subject to a resolution adopted by a board of county commissioners pursuant to R.C. 301.28. *See* R.C. 301.28(D) (any "county office that accepted [financial transaction] devices before January 1, 1998, may continue to accept such devices without being subject to any resolution passed by the board of county commissioners under [R.C. 301.28(B)] or any other oversight by the board of the office's financial transaction devices program").

In order to implement the resolution within the sheriff's office, the county would like to enter into a contract with a private company whereby the company processes financial transaction devices used to pay for county expenses.[3] The private company will set up kiosks and an e-commerce payment system to accept payments made to the county sheriff's office.[4] *See* Alan Davidson, *The Law of Electronic Commerce* 1 (2009) ("[e]lectronic commerce refers to all commercial transactions based on the electronic processing and transmission of data, including text, sound and images. This involves transactions over the internet, plus electronic funds transfers and Electronic Data Interchange…. [T]he expression 'electronic commerce' is typically used in connection with the expansion of commerce using computers and modern communications, most notably the internet and cyberspace"); Clyde W. Holsapple et al., *Toward a Unified View of Electronic Commerce, Electronic Business, and Collaborative Commerce: A Knowledge Management Approach*, 7 Knowledge and Process Management 151, 151-52 (2000) ("[e]-commerce is commonly defined as using technology to enable buy-sell transactions…. In everyday usage, the terms Internet commerce and Web-commerce are often interchanged with e-commerce…, even though e-commerce transactions are not limited to the Internet or Web"); *Merriam-Webster's Collegiate Dictionary* 688 (11th ed. 2005) (defining a "kiosk" as, among other things, "a small stand-alone device providing information and services on a computer screen"). For performing this service, the private company will collect a surcharge or convenience fee from a person who uses a kiosk or the e-commerce payment system to make a payment to the county sheriff's office.

In light of this proposed contract, you ask the following questions:

1. May a county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices use a processor of financial transaction devices to accept (1) money confiscated during the commitment of a person to the county jail, (2) money for a prisoner's inmate account, (3) bail, (4) money for property sold at a sheriff's sale, (5) payment of the fee for a license to carry a concealed handgun, or (6) payment of the fee for making a standard fingerprint impression sheet?

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[3] When a county contracts for the services of a processor of financial transaction devices under R.C. 301.28, the board of county commissioners is required to enter into the contract on behalf of the county. *See* R.C. 301.28(C) ("[t]he county shall follow the procedures provided in this division whenever it plans to contract with … processors of financial transaction devices for the purposes of this section…. The board of county commissioners … may choose to contract with any or all of the entities submitting proposals" to participate in the county's financial transaction devices program); R.C. 301.28(D) ("[e]ach county office subject to [a] resolution adopted under [R.C. 301.28(B)] may use only the … processors of financial transaction devices with which the board of county commissioners contracts, and each such office is subject to the terms of those contracts").

[4] The private company serves as a processor of financial transaction devices because the kiosks and e-commerce payment system are used to process financial transaction devices.

2. May a processor of financial transaction devices charge a person who uses a financial transaction device to make a payment to the county sheriff's office a surcharge or convenience fee that exceeds the surcharge or convenience fee established by a board of county commissioners pursuant to R.C. 301.28(E)?

I. Acceptance of Payments by Financial Transaction Devices for County Expenses

Your first question concerns a county sheriff's authority under R.C. 301.28 to use a processor of financial transaction devices to accept payments made to his office. Pursuant to R.C. 301.28 and a corresponding resolution adopted by a board of county commissioners under that statute, a county official[5] may use a processor of financial transaction devices to accept payments for county expenses.[6]

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[5] "County official," as used in R.C. 301.28, includes "the county auditor, county treasurer, county engineer, county recorder, county prosecuting attorney, county sheriff, county coroner, county park district and board of county commissioners, the clerk of the probate court, the clerk of the juvenile court, the clerks of court for all divisions of the courts of common pleas, and the clerk of the court of common pleas, the clerk of a county-operated municipal court, and the clerk of the county court." R.C. 301.28(A)(3).

[6] A resolution adopted by a board of county commissioners under R.C. 301.28 must include the following:

> (1) A specification of those county officials who, and of the county offices under those county officials that, are authorized to accept payments by financial transaction devices;
>
> (2) A list of county expenses that may be paid for through the use of a financial transaction device;
>
> (3) Specific identification of financial transaction devices that the board authorizes as acceptable means of payment for county expenses. Uniform acceptance of financial transaction devices among different types of county expenses is not required.
>
> (4) The amount, if any, authorized as a surcharge or convenience fee under [R.C. 301.28(E)] for persons using a financial transaction device. Uniform application of surcharges or convenience fees among different types of county expenses is not required.
>
> (5) A specific provision as provided in [R.C. 301.28(G)] requiring the payment of a penalty if a payment made by means of a financial transaction device is returned or dishonored for any reason.
>
> The board's resolution shall also designate the county treasurer as an administrative agent to solicit proposals … from financial institutions, issuers of financial transaction devices, and processors of financial transaction devices, to make recommendations about those proposals to the board, and to assist county offices in implementing the county's financial transaction devices program.

For purposes of R.C. 301.28, the term "county expenses" means "fees, costs, taxes, assessments, fines, penalties, payments, or any other expense a person owes to a county office under the authority of a county official other than dog registration and kennel fees required to be paid under [R.C. Chapter 955]." R.C. 301.28(A)(2). A county sheriff, as a county official, *see* R.C. 301.28(A)(3); note 5, *supra*, thus, in accordance with R.C. 301.28, may use a processor of financial transaction devices to accept fees, costs, taxes, assessments, fines, penalties, payments, and other expenses a person owes to the county sheriff's office.

The purpose of R.C. 301.28, as reflected in its language, is to provide authority for a county sheriff and other county officials to use processors of financial transaction devices to accept moneys owed to the county. *See generally State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) ("[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish"); *Merriam-Webster's Collegiate Dictionary* 74, 282, 440, 459, 469, 910, 915, 1280 (11th ed. 2005) (the terms "fees," "costs," "taxes," "assessments," "fines," "penalties," "payments," and "expenses" denote the payment of money from one person to another). A person owes money to the county when the person is (1) obligated to pay the county for something or (2) indebted to the county for some reason. *See Merriam-Webster's Collegiate Dictionary* 887 (11th ed. 2005) (the term "owe" means "to be under obligation to pay or repay in return for something received : … to be under obligation to render : … to be indebted for"). Accordingly, if (1) money confiscated during the commitment of a person to the county jail, (2) money for a prisoner's inmate account, (3) bail, (4) money for property sold at a sheriff's sale, (5) the fee for a license to carry a concealed handgun, or (6) the fee for making a standard fingerprint impression sheet is paid to a county sheriff's office to satisfy an obligation or debt due the county, the sheriff, in accordance with R.C. 301.28, may use a processor of financial transaction devices to accept the money, bail, or fee.

A. Use of a Processor of Financial Transaction Devices to Accept Money Confiscated During the Commitment of a Person to the County Jail

Let us now consider each of the situations listed in your first question to determine whether they involve payment of an obligation or debt to the county sheriff's office. We begin with the authority of a county sheriff to use a processor of financial transaction devices to accept money confiscated during the commitment of a person to the county jail.

You have informed us that a prisoner committed to the county jail is not permitted to possess money.[7] When a prisoner is committed to the county jail, the prisoner is searched and all money in

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R.C. 301.28(B).

[7] Your letter indicates that the county jail is not a minimum security jail that allows a prisoner to possess money. *See generally* 15 Ohio Admin. Code 5120:1-8-01(A)(9)(c) ("[f]or a minimum security jail, as defined by [15 Ohio Admin. Code 5120:1-7-02(A)(4)], if prisoners are permitted to

his possession is confiscated and held for him until he is released or transferred from the county jail.[8] *See* 15 Ohio Admin. Code 5120:1-8-01(A)(9) and (18); 15 Ohio Admin. Code 5120:1-10-01(A)(9) and (18); 15 Ohio Admin. Code 5120:1-12-01(A)(9) and (16). *See generally* R.C. 341.01 (the county sheriff shall govern and regulate the county jail "according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction"); 15 Ohio Admin. Code 5120:1-7-02(A) (the minimum standards for jails in Ohio are set forth in "rules 5120:1-8-01 to 5120:1-12-19 of the [Ohio] Administrative Code" and "apply to county jails"). At the time of the prisoner's release or transfer, the county sheriff is required to return the money to the prisoner or transfer the money to the detention facility where the prisoner is being transferred, respectively. *See* rule 5120:1-8-01(A)(18); rule 5120:1-10-01(A)(18); rule 5120:1-12-01(A)(16).

The confiscated money thus is not used to obtain goods or services from the county sheriff or to satisfy any type of debt. In addition, legal ownership of the confiscated money is not transferred from the prisoner to the county. Finally, no statute authorizes the county to retain for its own use money confiscated during the commitment of a prisoner to the county jail. For these reasons, money confiscated during the commitment of a person to the county jail is not paid to a county sheriff's office to discharge an obligation or debt and is not a county expense, as defined in R.C. 301.28(A)(2). Therefore, R.C. 301.28 does not authorize a county sheriff to use a processor of financial transaction devices to accept money confiscated during the commitment of a person to the county jail.

B. Use of a Processor of Financial Transaction Devices to Accept Money for a Prisoner's Inmate Account

The second situation involves the use of a processor of financial transaction devices to accept money for a prisoner's inmate account. A county sheriff may establish a prisoner inmate account for each prisoner. *See* R.C. 341.25(A); R.C. 2929.38(B); R.C. 2969.22. *See generally* R.C. 2969.21(E) (the term "inmate account" for purposes of R.C. 2969.21-.27, which govern civil actions by inmates against governmental entities or employees, includes an account established by the county sheriff that is similar to an account maintained by the Department of Rehabilitation and Correction under rules adopted by the Director of Rehabilitation and Correction); 15 Ohio Admin. Code 5120-5-02(B) ("[a]n individual account record shall be maintained for each inmate in the cashier's office of an institution which reflects all receipts and disbursements of funds from each account"). A prisoner's inmate account is a record of money that is deposited with, and disbursed by, the county sheriff on a prisoner's behalf. *See* R.C. 341.25(A); R.C. 2929.38(B); R.C. 2969.22; rule 5120-5-02.

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possess money, the jail shall implement policies and procedures that limit the amount of money possessed and shall include provisions that prevent prisoner gambling, theft and extortion").

[8] For the purpose of this opinion, it is assumed that money confiscated during the commitment of a person to the county jail is not subject to forfeiture to the state or a political subdivision under R.C. 2981.04 or R.C. 2981.05. *See generally* R.C. Chapter 2981 (forfeiture law).

The money in a prisoner's inmate account may be used by the prisoner for various purposes. *See* R.C. 341.25(A); R.C. 2929.38(B); R.C. 2969.22. For example, R.C. 341.25 authorizes a county sheriff to establish a commissary for the county jail. If a commissary is established, all prisoners "incarcerated in the jail shall receive commissary privileges." R.C. 341.25(A). A prisoner's purchases from the commissary shall be deducted from the prisoner's inmate account in the county jail's business office.[9] *Id.*

Money deposited into a prisoner's inmate account is the legal property of the prisoner until the prisoner or a court authorizes the money to be disbursed from the account for some purpose. *See* R.C. 341.25(A); R.C. 2929.38(B); R.C. 2969.22; *see also Johnson v. Mansfield Corr. Inst.*, 2010-Ohio-6648, 2010 Ohio Misc. LEXIS 434 (Ct. Claims Oct. 28, 2010) (finding a correctional institution liable when the institution honored a forged withdrawal slip that resulted in money being withdrawn from a prisoner's inmate account without the prisoner's knowledge or authorization). Money deposited into a prisoner's inmate account is not at the time it is deposited used to obtain goods or services or to satisfy any type of obligation or debt. Nor does any statute authorize the county to keep such money for its own use. A county sheriff merely holds the money for a prisoner in an inmate account until the prisoner or a court authorizes the money to be disbursed from the account for some purpose. *See* R.C. 341.25(A); R.C. 2929.38(B); R.C. 2969.22; *see also Johnson v. Mansfield Corr. Inst.*

In addition, nothing in Ohio law requires anyone to deposit money into a prisoner's inmate account to obtain goods or services or to satisfy any type of obligation or debt. A deposit of money for a prisoner's inmate account thus is not paid to a county sheriff's office to discharge an obligation or debt. Accordingly, such a deposit of money with a county sheriff is not a county expense, as defined in R.C. 301.28(A)(2), and R.C. 301.28 does not authorize a county sheriff to use a processor of financial transaction devices to accept money for a prisoner's inmate account.

C. Use of a Processor of Financial Transaction Devices to Accept Bail

Your third situation involves the authority of a county sheriff to use a processor of financial transaction devices to accept bail. Bail "is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave."[10] R.C.

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[9] R.C. 341.25(A) provides that "[t]he commissary shall provide for the distribution to indigent persons incarcerated in the [county] jail necessary hygiene articles and writing materials."

[10] Bail may be in the form of a personal recognizance; unsecured or secured bail bond; surety bond; bond secured by real estate or securities; current valid Ohio driver's or commercial driver's license; cash; check; money order; credit card; or any other form of money that is posted by or for a person to prevent the person from being placed or held in a county jail or other type of detention facility. *See* R.C. 2743.70(D)(2); R.C. 2935.27; R.C. 2937.22(A); R.C. 2937.221; R.C. 2949.091(D)(1); R.C. 2949.093(H)(2); R.C. 2949.094(E)(1); Ohio R. Crim. P. 46(A); Ohio Traf. R. 4(B).

2937.22(A); *see* R.C. 2937.31; R.C. 2937.40-.41; Ohio R. Crim. P. 46; Ohio Traf. R. 4. Pursuant to R.C. 2937.23(A)(2), a county sheriff may in certain instances accept bail. *See* Ohio R. Crim. P. 46(G); 1981 Op. Att'y Gen. No. 81-091; *see also* R.C. 311.17(B)(2); R.C. 2935.15; Ohio Traf. R. 4(B).

When bail is deposited with a county sheriff, the property pledged as bail is retained by a court until the court (1) orders the bail forfeited to the court; (2) releases the property to the person who posted it as bail; (3) renders a final verdict in the case; or (4) dismisses the charges in the case. And, legal ownership of the property remains with the person who pledged the property. *See* R.C. 2743.70(B); R.C. 2935.15; R.C. 2935.27(B)-(D); R.C. 2937.22(B)-(C); R.C. 2937.28; R.C. 2937.35-.36; R.C. 2937.40-.41; R.C. 2949.091(B); R.C. 2949.093(E); R.C. 2949.094(C); Ohio R. Crim. P. 46(I); Ohio Traf. R. 4(B); Ohio Traf. R. 7(C). This means that at the time bail is deposited with a county sheriff neither the state nor a political subdivision acquires ownership rights in the property pledged as bail. Instead, like the previous two situations, a county sheriff accepts the property pledged as bail from a person and the county holds the property for the person until the county either obtains legal ownership of the property or returns the property to the person.

Also, a person who is eligible for bail is not required to post bail under Ohio law. *See* R.C. 2937.32. If a person who is eligible for bail "does not offer sufficient bail, the court shall order the accused to be detained." *Id.* Bail thus is not paid to a county sheriff's office to discharge an obligation or debt and is not a county expense, as defined in R.C. 301.28(A)(2). Hence, R.C. 301.28 does not authorize a county sheriff to use a processor of financial transaction devices to accept bail.[11]

D. Use of a Processor of Financial Transaction Devices to Accept Money for Property Sold at a Sheriff's Sale

Situation four involves the use of a processor of financial transaction devices to accept money for property sold at a sheriff's sale. Numerous statutes authorize a county sheriff to sell a person's personal or real property at a sheriff's sale to satisfy the person's debts. *See, e.g.*, R.C. 323.25-.28; R.C. 323.66-.73; R.C. 2323.07; R.C. 2329.091-.18; R.C. 2329.34-.35; R.C. 5721.14-.16; R.C.

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[11] Although not authorized by R.C. 301.28, a county sheriff may nevertheless accept payment of bail by a financial transaction device in accordance with a policy adopted by a court or in situations in which the clerk of the court of common pleas or sheriff accepted payment of bail by such devices before July 1, 1999, or January 1, 1998, respectively. *See* R.C. 301.28(D); R.C. 2937.23(A)(2); Ohio R. Crim. P. 46(G); Ohio Traf. R. 4(B); *see also* Ohio Const. art. I, § 9 ("[w]here a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type … of bail"); 1970 Op. Att'y Gen. No. 70-036 (syllabus) ("Ohio State Highway Patrol Officers can accept credit cards on the highway from violators within the jurisdictions of those courts which have entered into an agreement with the credit card servicing agency, which agreement provides for the payment to the court upon presentation of a completed sales draft and the only conditions of such agreement being that the bail amount involved not exceed the dollar limitations contained in the agreement, the sales draft be legible and that the sales draft be drawn on an unexpired credit card").

5721.18-.19; R.C. 5721.37; R.C. 5721.39; R.C. 5722.03. *See generally Black's Law Dictionary* 1454-56 (9th ed. 2009) (a "sheriff's sale," which may also be called a judicial sale or execution sale, is a forced sale of a debtor's property by a government official carrying out a writ of execution). When property is sold by the county sheriff at a sheriff's sale, the sheriff is required to collect the purchase price from the buyer, transfer ownership of the property to the buyer, and disburse the proceeds of the sale as provided by law.[12] *See, e.g.*, R.C. 323.28; R.C. 323.73; R.C. 2329.31-.32; R.C. 2329.36; R.C. 2329.43-.44; R.C. 5721.19; R.C. 5721.37; R.C. 5721.39; R.C. 5722.03; R.C. 5722.08. A sheriff's sale thus is a process undertaken by the county sheriff to transfer ownership of property from one person (debtor) to another (buyer) in order to satisfy the debts of the debtor.

For performing this service, the county is entitled to a portion of the proceeds of the sale to cover its costs in conducting the sheriff's sale. *See, e.g.*, R.C. 323.28; R.C. 323.73; R.C. 2329.44; R.C. 5721.16; R.C. 5721.19; R.C. 5721.37; R.C. 5721.39; R.C. 5722.03; R.C. 5722.08. For example, pursuant to R.C. 311.17, a county sheriff who conducts a sheriff's sale may be entitled to collect the following fees:

> (A) For the service and return of the following writs and orders:
> (1) Execution:
> …;
> (b) When levy is made on real property, for the first tract, twenty-five dollars, and for each additional tract, ten dollars;
> (c) When levy is made on goods and chattels, including inventory, fifty dollars.
> (2) Writ of attachment of property, except for purpose of garnishment, forty dollars;
> …;
> (4) Writ of replevin, forty dollars;
> …;
> (10) Writ of partition, twenty-five dollars;
> (11) Order of sale on partition, for the first tract, fifty dollars, and for each additional tract, twenty-five dollars;
> (12) Other order of sale of real property, for the first tract, fifty dollars, and for each additional tract, twenty-five dollars;
> (13) Administering oath to appraisers, three dollars each;
> (14) Furnishing copies for advertisements, one dollar for each one hundred words[.]

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[12] Generally, proceeds from the sale of property at a sheriff's sale are disbursed to pay the debtor's creditors and the costs of the county in conducting the sale. *See, e.g.*, R.C. 323.28; R.C. 323.73; R.C. 2329.44; R.C. 5721.16; R.C. 5721.19; R.C. 5721.37; R.C. 5721.39; R.C. 5722.03; R.C. 5722.08. Proceeds from the sale that remain after the costs and creditors are paid are delivered to the debtor. *See, e.g.*, R.C. 2329.44; R.C. 5721.20.

> ….
> (B) In addition to the fee for service and return:
> (1) On each summons, writ, order, or notice, a fee of two dollars per mile for the first mile, and one dollar per mile for each additional mile, going and returning, actual mileage to be charged on each additional name;
> ….
> (4) Poundage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate, one and one-half per cent;
> (5) Making and executing a deed of land sold on execution, decree, or order of the court, to be paid by the purchaser, fifty dollars.

In addition, a sheriff's sale may be conducted to collect taxes owed to the county. *See, e.g.*, R.C. 323.25-.28; R.C. 323.66-.73; R.C. 5721.14-.16; R.C. 5721.18-.19; R.C. 5721.37; R.C. 5721.39; R.C. 5722.03; R.C. 5722.08. In these cases, the county is entitled to a portion of the proceeds of the sale as a creditor and to cover its costs in conducting the sheriff's sale. *See, e.g.*, R.C. 323.28; R.C. 323.73; R.C. 5721.16; R.C. 5721.19; R.C. 5721.37; R.C. 5721.39; R.C. 5722.03; R.C. 5722.08.

Accordingly, when a buyer agrees to purchase property at a sheriff's sale, the buyer is obligated to pay the county's costs in conducting the sale and, in some cases, taxes owed to the county. *See* R.C. 2329.30 (penalties when a purchaser of property at a sheriff's sale fails to pay the balance due on time). In essence, the buyer is paying the county for transferring ownership of the purchased property to him. The money paid to the county sheriff for property purchased at a sheriff's sale thus is used to obtain the services of the county in transferring ownership of property from one person (debtor) to another (buyer), and is a county expense, as defined in R.C. 301.28(A)(2), that is paid by the buyer. This means that a county sheriff may, in accordance with R.C. 301.28, use a processor of financial transaction devices to accept money for property sold at a sheriff's sale.

E. Use of a Processor of Financial Transaction Devices to Accept Payment of the Fee for a License to Carry a Concealed Handgun

Your fifth situation involves the use of a processor of financial transaction devices to accept payment of the fee for a license to carry a concealed handgun.[13] A person who applies for a license to carry a concealed handgun is required to pay a fee unless it is waived. R.C. 2923.125; R.C. 2923.1213.[14]

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[13] For the purpose of this opinion, the phrase "license to carry a concealed handgun" means any type of license to carry a concealed handgun issued under R.C. 2923.125 or R.C. 2923.1213.

[14] R.C. 2923.124(E) states that the phrases "license fee" and "license renewal fee," as used in R.C. 2923.124-.1213, mean the "fee for a license to carry a concealed handgun or the fee to renew that license that is prescribed pursuant to [R.C. 109.731(C)] and that is to be paid by an applicant for a license of that type." No provision in R.C. 109.731(C) currently prescribes a fee for a license to carry

A person pays the fee for a license to carry a concealed handgun in order to have a county sheriff process his application for the license. Absent the payment of the fee, if required, a county sheriff may not process the person's application for a license to carry a concealed handgun. R.C. 2923.125; R.C. 2923.1213. The fee for a license to carry a concealed handgun is paid to secure the services of a county sheriff in processing the person's application for the license and is a county expense, as defined in R.C. 301.28(A)(2). Accordingly, a county sheriff, in accordance with R.C. 301.28, may use a processor of financial transaction devices to accept payment of the fee for a license to carry a concealed handgun.

F. Use of a Processor of Financial Transaction Devices to Accept Payment of the Fee for Making a Standard Fingerprint Impression Sheet

The final situation you have presented to us is the use of a processor of financial transaction devices to accept payment of the fee for making a standard fingerprint impression sheet. The superintendent of the Bureau of Criminal Identification and Investigation (BCI&I) shall provide a county sheriff with standard impression sheets on which fingerprints may be made in accordance with the fingerprinting system of identification. R.C. 109.58; R.C. 109.572(C)(2); *see also* R.C. 109.578(C)(2); R.C. 109.579(C)(2). A county sheriff may use a standard fingerprint impression sheet to obtain the fingerprints of a person when the person requests him to do so for the purpose of having a criminal records check conducted. *See* R.C. 109.572(C)(2) ("[a]ny person for whom a [criminal] records check is requested under or required by any of [the] sections [listed herein] shall obtain the fingerprint impressions at a county sheriff's office, municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the superintendent [of BCI&I]"); R.C. 109.578(C)(2) ("[a]ny person for whom a [criminal] records check is requested pursuant to [R.C. 505.381, R.C. 737.081, R.C. 737.221, or R.C. 4765.301] shall obtain the fingerprint impressions at a county sheriff's office, a municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the superintendent [of BCI&I]"); R.C. 109.579(C)(2) ("[a]ny person for whom the administrator [of the Bureau of Workers' Compensation] requests the superintendent [of BCI&I] to conduct a criminal records check pursuant to [R.C. 4123.444] shall have the person's fingerprint impressions made at a county sheriff's office, a municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the superintendent [of

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a concealed handgun. On October 16, 2009, the language establishing the fee for a license to carry a concealed handgun was removed from R.C. 109.731(C) and inserted in R.C. 2923.125 and R.C. 2923.1213. Am. Sub. H.B. 1, 128th Gen. A. (2009) (eff. July 17, 2009, with certain sections effective on other dates). Thus, notwithstanding the language of R.C. 2923.124(E), the fee for a license to carry a concealed handgun is set forth in R.C. 2923.125 or R.C. 2923.1213. *See generally* R.C. 311.42(A) (a fee for a license to carry a concealed handgun collected by a sheriff under R.C. 2923.125 or R.C. 2923.1213 must be deposited in the county treasury and credited to the sheriff's concealed handgun license issuance expense fund).

BCI&I]"). A county sheriff who makes a standard fingerprint impression sheet may charge the person a reasonable fee for that service. R.C. 109.572(C)(2); R.C. 109.578(C)(2); R.C. 109.579(C)(2).

A person who pays the fee charged by a county sheriff for making a standard fingerprint impression sheet does so in order to obtain something from the county sheriff. The payment of the fee entitles the person to a standard fingerprint impression sheet prepared by the county sheriff. Insofar as the fee charged by a county sheriff for making a standard fingerprint impression sheet is paid to acquire a completed standard fingerprint impression sheet, the fee is a county expense, as defined in R.C. 301.28(A)(2). For this reason, a county sheriff may, in accordance with R.C. 301.28, use a processor of financial transaction devices to accept payment of the fee for making a standard fingerprint impression sheet.

G. Summary of the First Question

In response to your first question, we conclude that a county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices may not use a processor of financial transaction devices to accept (1) money confiscated during the commitment of a person to the county jail, (2) money for a prisoner's inmate account, or (3) bail. Additionally, a county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices may use a processor of financial transaction devices to accept (1) money for property sold at a sheriff's sale, (2) payment of the fee for a license to carry a concealed handgun, or (3) payment of the fee for making a standard fingerprint impression sheet.

II. Imposition of a Surcharge or Convenience Fee in Excess of the Surcharge or Convenience Fee Established in Accordance with R.C. 301.28(E)

Your second question asks whether a processor of financial transaction devices may charge a person who uses a financial transaction device to make a payment to the county sheriff's office a surcharge or convenience fee that exceeds the surcharge or convenience fee established by a board of county commissioners pursuant to R.C. 301.28(E). R.C. 301.28(E) authorizes a board of county commissioners to impose a surcharge or convenience fee upon a person who makes a payment to the county sheriff by a financial transaction device:

> A board of county commissioners may establish a surcharge or convenience fee that may be imposed upon a person making payment by a financial transaction device. The surcharge or convenience fee shall not be imposed unless authorized or otherwise permitted by the rules prescribed by an agreement governing the use and acceptance of the financial transaction device.

The legislative history of R.C. 301.28 indicates that the purpose of the surcharge or convenience fee is to cover the cost incurred by the county in processing a payment made to the county by a financial transaction device. Ohio Legislative Service Comm'n, Analysis of Am. Sub.

H.B. 515, 122nd Gen. A. (1998), at p. 2 (eff. Mar. 30, 1999) (as introduced).[15] The legislative history also demonstrates that the amount of the surcharge or convenience fee may not exceed the actual cost incurred by the county in processing a payment made by a financial transaction device. *Compare* 1997-1998 Ohio Laws, Part II, 4290, 4296 (Am. Sub. H.B. 515, eff. Mar. 30, 1999) (enacting R.C. 301.28, which authorized the following: "A board of county commissioners may establish a surcharge or convenience fee that may be imposed upon a person making payment by a financial transaction device. The surcharge or convenience fee shall not be imposed unless authorized or otherwise permitted by the rules prescribed by an agreement governing the use and acceptance of the financial transaction device"), *with* H.B. 515, 122nd Gen. A. (1998), at p. 9 (as introduced on June 25, 1997) (including within R.C. 301.28 the following language: "A board of county commissioners may establish a surcharge or convenience fee that may be imposed upon a person making payment by a financial transaction device. The amount of the surcharge or convenience fee, if any, shall be reasonably related to the costs incurred by the county in processing payments made by the financial transaction device but shall not exceed the costs incurred by the county by more than two per cent. The surcharge or convenience fee shall not be imposed unless authorized by the rules prescribed by any agreement governing the use and acceptance of the financial transaction device"). *See generally* Journal of the House Local Government and Township Committee, at p. 1 (Jan. 14, 1998) (proponent testimony requesting an amendment to H.B. 515, 122nd Gen. A. (1998) (as introduced on June 25, 1997) "to limit surcharges, or convenience fees, so they may not exceed the amount of the fee paid to the financial institution." The proponent of the testimony "suggested this [amendment] would keep counties from adding costs beyond what the county must pay the financial institution").[16]

A surcharge or convenience fee imposed by a board of county commissioners under R.C. 301.28(E) thus must reflect the actual cost incurred by the county in processing a payment made by a financial transaction device to the county sheriff's office. The contract between a board of county commissioners and a processor of financial transaction devices establishes the surcharge or convenience fee that the processor may charge a person who uses a financial transaction device to make a payment to the county sheriff's office. *See* R.C. 301.28(E). The surcharge or convenience fee established under such a contract may not, however, exceed the amount established by the board of county commissioners under R.C. 301.28(E) and set forth in the county resolution authorizing the county sheriff to accept payments by financial transaction devices. *See* R.C. 301.28(B)(4) (the county

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[15] R.C. 301.28 was enacted by Am. Sub. H.B. 515, 122nd Gen. A. (1998) (eff. Mar. 30, 1999), reprinted in 1997-1998 Ohio Laws, Part II, 4290, at 4296-97.

[16] The House Local Government and Township Committee amendment to limit surcharges and convenience fees imposed pursuant to R.C. 301.28 was adopted unanimously. Journal of the House Local Government and Township Committee, at p. 1 (Apr. 1, 1998). The amendment deleted from R.C. 301.28 the provision authorizing a county to impose a surcharge or convenience fee that exceeds the actual cost incurred by the county in processing a payment made by a financial transaction device. *See* Sub. H.B. 515, 122nd Gen. A. (1998), at pp. 11-12 (as reported by the House Local Government and Township Committee).

resolution authorizing the acceptance of payments by financial transaction devices must include "[t]he amount, if any, authorized as a surcharge or convenience fee under [R.C. 301.28(E)] for persons using a financial transaction device").

Once the surcharge or convenience fee is established by contract, the county sheriff is required to post a notice that states the amount of the surcharge or convenience fee:

> Notice to each person making a payment [by financial transaction device] shall be provided regardless of the medium used to make the payment and in a manner appropriate to that medium. Each notice shall include all of the following:
>
> (1) A statement that there is a surcharge or convenience fee for using a financial transaction device;
>
> (2) The total amount of the charge or fee expressed in dollars and cents for each transaction, or the rate of the charge or fee expressed as a percentage of the total amount of the transaction, whichever is applicable;
>
> (3) A clear statement that the surcharge or convenience fee is nonrefundable.

R.C. 301.28(E). And, the county sheriff may not increase or decrease the amount of the surcharge or convenience fee established by the contract and set forth in the notice posted by the county sheriff. *See* R.C. 301.28(D) (a county sheriff who is subject to board of county commissioners' resolution regarding the payment of county expenses by financial transaction devices "is subject to the terms of [the] contract").

R.C. 301.28 thus authorizes a processor of financial transaction devices to charge the amount authorized as a surcharge or convenience fee set forth in the contract between the board of county commissioners and the processor, provided the amount does not exceed the amount established by the board of county commissioners pursuant to R.C. 301.28(E). In other words, a processor of financial transaction devices may not charge a surcharge or convenience fee that exceeds the surcharge or convenience fee established by a board of county commissioners pursuant to R.C. 301.28(E). Consequently, a processor of financial transaction devices may not charge a person who uses a financial transaction device to make a payment to the county sheriff's office a surcharge or convenience fee that exceeds the surcharge or convenience fee established by a board of county commissioners pursuant to R.C. 301.28(E).

III. Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices may not use a processor of financial transaction devices to accept (1) money confiscated during the commitment of a person to the county jail, (2) money for a prisoner's inmate account, or (3) bail.

2. A county sheriff who has been authorized by the board of county commissioners in accordance with R.C. 301.28 to accept payments by financial transaction devices may use a processor of financial transaction devices to accept (1) money for property sold at a sheriff's sale, (2) payment of the fee for a license to carry a concealed handgun, or (3) payment of the fee for making a standard fingerprint impression sheet.

3. A processor of financial transaction devices may not charge a person who uses a financial transaction device to make a payment to the county sheriff's office a surcharge or convenience fee that exceeds the surcharge or convenience fee established by a board of county commissioners pursuant to R.C. 301.28(E).

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General