

February 11, 2000

OPINION NO. 2000-003

The Honorable Julia R. Bates  
Lucas County Prosecuting Attorney  
Lucas County Courthouse  
Toledo, Ohio 43624-1680

Dear Prosecutor Bates:

You have requested an opinion regarding the payment of a fee by a city to the county when a prisoner sentenced by a municipal court for a violation of a state criminal statute participates in a work-release program. You have stated that the Lucas County Court of Common Pleas operates and administers a work-release program. Currently, the county charges a city thirty-five dollars per day, less reimbursement from the prisoner, for each day a prisoner sentenced by a municipal court for a violation of a municipal ordinance participates in the work-release program. A city is not charged the fee, however, when the prisoner is sentenced by a municipal court for a violation of a state criminal statute. The county would like to begin charging cities the thirty-five dollar fee when a prisoner sentenced by a municipal court for a violation of a state criminal statute participates in the work-release program. Accordingly, you wish to know whether the county may charge a city a fee when a prisoner sentenced by a municipal court for a violation of a state criminal statute participates in the work-release program.

A work-release program may be established by the courts of a county pursuant to R.C. 5147.28(A). This statute provides, in part, as follows:

The court of common pleas and each municipal and county court in a county in which all of those courts agree on uniform standards *may provide by rule for a work-release program* to permit any prisoner in a county or city jail or workhouse, other than a prisoner sentenced under a non-suspendable sentence, to be employed with the prisoner's consent outside of the jail or workhouse. In any county in which the common pleas court, after reasonable efforts to obtain such an agreement, determines that such an agreement is not possible, the court, after reasonable notice to all interested courts and officials, *shall place into effect rules of the court making provision for a work-release program* available to all courts within the county. (Emphasis added.)

Work-release programs are thus “established by courts, which adopt rules for their operation.” 1982 Op. Att’y Gen. No. 82-007 at 2-22.

Nothing in R.C. 5147.28 or elsewhere in the Revised Code specifies the manner in which courts are to operate work-release programs. There also does not appear to be any case law requiring that such programs be operated in a particular manner. Courts are, therefore, authorized to adopt, pursuant to R.C. 5147.28(A), rules that are reasonably necessary to operate a work-release program. *See generally Federal Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103, 106 (1917) (“[w]hen a statute clearly confers a grant of power to do a certain thing, without placing any limitations as to the manner or means of doing it, certainly the grantee of such power is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly in the grantee’s interests; particularly where that grantee is the public”), *dismissed for want of jurisdiction*, 248 U.S. 547 (1919); *State ex rel. Attorney General v. Morris*, 63 Ohio St. 496, 512, 59 N.E. 226, 230 (1900) (“[a]nd if it should be found that certain things are authorized to be done ... and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption would be that the general assembly intended that it might be performed in a reasonable manner, not in conflict with any law of the state”).

With respect to your specific inquiry, local rule 9.03 of the Lucas County Court of Common Pleas provides that the Lucas County work-release program is operated by the Lucas County Court of Common Pleas and that “[m]unicipal courts in Lucas County may participate in use of this program upon proper agreement.” Although this rule does not expressly authorize the county to charge a city a fee when using the work-release program, the provision of the rule permitting a municipal court to use the work-release program “upon proper agreement” may reasonably be construed to permit county and municipal officials to negotiate the provisions under which the work-release program may be used by a city. As a provision of the agreement, the county may require a city to pay a fee for using the work-release program. *See generally* 1995 Op. Att’y Gen. No. 95-004 at 2-21 (“the allocation of costs incurred by [a] county in dispatching the emergency personnel of a township or municipal corporation is properly a matter that should be negotiated by the county and township or municipal corporation as a part of the agreement for dispatching services that they enter into pursuant to R.C. 307.15”); 1990 Op. Att’y Gen. No. 90-025 at 2-95 (“the costs incurred by [a] township in making its dispatching network available to [a] village police department is a matter that one may reasonably expect to be negotiated between the township and village”).

You have informed us that the county has entered into agreements with several cities that permit the municipal courts serving these cities to refer prisoners to the work-release program. The determination whether the county may charge these cities a fee when prisoners sentenced by the municipal courts serving these cities for a violation of a state criminal statute participate in the work-release program will depend upon the specific terms of these agreements. If the agreements between the county and the cities authorize the county to charge the cities a fee when prisoners sentenced by the municipal courts serving these cities for a violation of a state criminal

statute participate in the work-release program, the county may assess the fee against the cities. However, if the agreements do not contain such authorization, the county may not charge the cities the fee.<sup>1</sup>

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to local rule 9.03 of the Lucas County Court of Common Pleas, the county may charge a city a fee when a prisoner sentenced by a municipal court serving that city for a violation of a state criminal statute participates in the county's work-release program under R.C. 5147.28 if the work-release agreement between the county and the city authorizes the county to charge the city a fee in that circumstance.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

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<sup>1</sup> An agreement between the county and a city may be amended to authorize the county to charge the city a fee when a prisoner sentenced by a municipal court serving that city for a violation of a state criminal statute participates in the work-release program. *See generally Fraser v. Magic Chef-Food Giant Markets, Inc.*, 324 F.2d 853, 857 (6th Cir. 1963) (“[p]arties to a contract may amend, modify or cancel a contract in such manner as is agreeable to them”); *Phelps v. Logan Natural Gas & Fuel Co.*, 101 Ohio St. 144, 148, 128 N.E. 58, 59 (1920) (unless limited by positive provisions of a statute, contracts of a governmental entity are governed by the same principles as apply to contracts between individuals).

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SYLLABUS:

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Pursuant to local rule 9.03 of the Lucas County Court of Common Pleas, the county may charge a city a fee when a prisoner sentenced by a municipal court serving that city for a violation of a state criminal statute participates in the county's work-release program under R.C. 5147.28 if the work-release agreement between the county and the city authorizes the county to charge the city a fee in that circumstance.