

December 13, 2011

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
6th Floor Administration Building
21 West Boardman Street
Youngstown, Ohio 44503

SYLLABUS:

2011-047

1. A veterans service commission may provide financial assistance to a veterans treatment court to the extent that such assistance is directed to establishing and fulfilling an outreach program under R.C. 5901.03(E).
2. A veterans service commission may hire and compensate a person who will work at the veterans treatment court and provide assistance to the court as specified by the terms of an outreach program established under R.C. 5901.03(E).
3. A court of common pleas may not use special project fund moneys collected pursuant to R.C. 2303.201(E)(1) to provide financial assistance to a veterans treatment court operated by a municipal court.



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OPINION NO. 2011-047

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
6th Floor Administration Building
21 West Boardman Street
Youngstown, Ohio 44503

Dear Prosecutor Gains:

You have requested an opinion regarding funding of a veterans treatment court operated by a municipal court. Specifically, you ask:

1. May a county veterans service commission utilize its funding to financially assist a veterans treatment court operated by a municipal court?
2. Under the auspices of R.C. 5901.03(E), which authorizes a county veterans service commission to expend funds for “outreach programs,” may the veterans service commission hire a part-time employee to assist a veterans treatment court?
3. If the answer to the previous question is in the affirmative, could this employee’s designated work location be the veterans treatment court rather than the offices of the veterans service commission?
4. R.C. 2303.201(E)(1) authorizes a court of common pleas to acquire funds for special projects of the court. May such special project funds be utilized to financially assist a veterans treatment court operated by a municipal court?

For the reasons discussed below, we conclude that a veterans service commission (VSC) may establish an outreach program in coordination with a veterans treatment court and, as part of such a program, hire an employee to assist a veterans treatment court. The VSC may designate that employee’s work location as the veterans treatment court. Finally, we conclude that special project fund moneys collected by a court of common pleas pursuant to R.C. 2303.201(E)(1) may not be used to provide financial assistance to a veterans treatment court operated by a municipal court.

Municipal Courts and Veterans Treatment Courts

The municipal court system in Ohio is established and governed by the provisions of R.C. Chapter 1901, enacted by the General Assembly pursuant to its authority under Article IV, § 1 of the Ohio Constitution to establish courts inferior to the Ohio Supreme Court. *See, e.g.*, 1990 Op. Att’y Gen. No. 90-110, at 2-485 to 2-487 (discussing the development of the municipal court system in Ohio). The powers and jurisdiction of municipal courts are set forth by statute. *See* R.C. 1901.02; R.C. 1901.17-.18. R.C. Chapter 1901 also provides various sections related to the judges, operation, and procedures of municipal courts. *See* R.C. 1901.06-.11; R.C. 1901.13; R.C. 1901.21-.25. *See generally* 1990 Op. Att’y Gen. No. 90-110, at 2-485 to 2-487 (the General Assembly has established a system of municipal courts without a requirement of uniformity). R.C. 1901.011 further creates two specific municipal court divisions—a housing division in the Cleveland Municipal Court and the Toledo Municipal Court and an environmental division in the Franklin County Municipal Court. No other special divisions are provided for in R.C. Chapter 1901.

Some local courts in Ohio, such as the Youngstown Municipal Court, have established a specialized docket to address “the particular needs of veterans involved in the criminal justice system.”¹ This type of specialized docket is referred to as a veterans treatment court.² Veterans treatment courts handle a veterans-only docket and typically hear the cases of veterans suffering from traumatic brain injuries, posttraumatic stress disorder, other organic disorders, or addictions such as drug addiction or alcoholism. In addition to assisting veterans by offering mental health and treatment services, veterans treatment courts may also offer vocational skills training, connect the veterans with other veterans who act as mentors, and direct the veterans to state and federal resources available to veterans, including through the U.S. Department of Veterans Affairs.³

In Ohio, veterans treatment courts, and other specialized dockets, are not created by statute. As explained by the Ohio Supreme Court, “[w]hile the Ohio General Assembly has created a few specialized docket judgeships through legislation (Hamilton County Drug Court, Toledo Housing Court, Franklin County Environmental Court), the overwhelming majority of specialized docket

¹ Office of National Drug Control Policy, *Veterans Treatment Courts* (December 2010), http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/veterans_treatment_courts_fact_sheet_12-13-10.pdf.

² There are nearly 150 “specialized dockets” operating in Ohio, including drug courts, mental health courts, drunk driving courts, domestic violence courts, child support enforcement courts, re-entry courts, sex offender courts, and veterans courts. *See* The Supreme Court of Ohio, *Supreme Court Adopts Specialized Dockets Standards* (Aug. 19, 2011), *available at* http://www.sconet.state.oh.us/PIO/news/2011/ruleAmend_081911.asp. These specialized programs are “uniquely tailored to helping specific populations within the court system.” *Id.*

³ *See* The Supreme Court of Ohio, *Second Ohio Veterans Court Opens in Youngstown* (Jan. 26, 2011), *available at* http://www.sconet.state.oh.us/PIO/news/2011/veteransCourt_012611.asp.

programs are established through local court rules and docket management tools.” The Supreme Court of Ohio, Specialized Dockets Section, *A Handbook for Developing a Mental Health Court Docket* 13 (May 2008) (discussing the procedure for establishing a specialized docket).⁴ The decision to create a veterans treatment court is within the discretion of the local courts. *See id.* at 14.

Authority of a VSC to Provide Assistance to a Veterans Treatment Court

Your first three questions relate to the ability of a county VSC to provide financial assistance to a veterans treatment court that is operated by a municipal court. Before addressing these questions, we first review the operation and functions of a VSC.

Each county has a VSC composed of five members. R.C. 5901.02. Each VSC is responsible for providing financial assistance and other aid to indigent veterans and their families. R.C. 5901.03;⁵

⁴ The Ohio Supreme Court has adopted a new rule related to the operation of specialized dockets. Rule 36.02 of the Rules of Superintendence for the Courts of Ohio allows local courts to receive Supreme Court certification as a “specialized docket.” *See* The Supreme Court of Ohio, *Supreme Court Adopts Specialized Dockets Standards* (Aug. 19, 2011), *available at* http://www.sconet.state.oh.us/PIO/news/2011/ruleAmend_081911.asp. The new rule, which takes effect on January 1, 2013, creates a minimum standard for uniform practices for such specialized dockets. *See id.*

⁵ R.C. 5901.03 enumerates the general duties of a county veterans service commission (VSC):

The commission’s duties shall include but are not limited to the following:

- (A) Employing such staff as are necessary to carry out the commission’s duties, and fixing their compensation;
- (B) Establishing policies and procedures for the administration of the commission and the veterans service office;
- (C) Establishing policies and procedures for the administration of assistance as provided under this chapter;
- (D) Causing the budgets of the veterans service commission and veterans service office to be presented to the board of county commissioners for approval;
- (E) Establishing programs of outreach and coordination with other agencies to enhance available services to veterans within the county;
- (F) Promoting, monitoring, and providing funding for ongoing education and training for veterans service commissioners and staff;
- (G) Making reports to the organizations represented on the commission, as provided in [R.C. 5901.02], and to others, upon request;
- (H) Establishing regularly scheduled transportation for veterans to and from veterans administration medical centers whose districts the county is within, through contractual agreements or through other arrangements determined by the commission to be most cost-effective;

R.C. 5901.08; R.C. 5901.15; *see also* 2011 Op. Att’y Gen. No. 2011-029, at 2-236 to 2-237 (discussing powers and duties of VSC); 2008 Op. Att’y Gen. No. 2008-033 (same as previous parenthetical). Among a VSC’s statutory duties is that of “[e]stablishing programs of outreach and coordination with other agencies to enhance available services to veterans within the county.” R.C. 5901.03(E).

A VSC is funded through a tax levy made by the board of county commissioners as the county’s taxing authority. R.C. 5901.11; *see also* 2011 Op. Att’y Gen. No. 2011-029, at 2-237 (discussing funding of VSC); 2008 Op. Att’y Gen. No. 2008-033, at 2-339 to 2-342 (same as previous parenthetical); 2001 Op. Att’y Gen. No. 2001-033, at 2-197 (same as first parenthetical). Because public moneys of the county fund a VSC’s operation, the moneys provided to a VSC are “subject to numerous provisions of law concerning the manner in which those funds may be used.” 2001 Op. Att’y Gen. No. 2001-033, at 2-197. *See generally, e.g.*, Ohio Const. art. XII, § 5 (“[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied”); R.C. 5705.38(C) (stating, in part, “[a]ppropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services”); R.C. 5705.41 (setting forth restrictions on the appropriation and expenditure of funds by subdivisions and taxing authorities, including counties and boards of county commissioners, such as prohibiting expenditures without a proper appropriation for that purpose or other than by a proper warrant drawn against an appropriate fund, and requiring a certificate of available funds for certain contracts and orders).

In 2001 Op. Att’y Gen. No. 2001-033, the Attorney General addressed several questions about the authority of a VSC under R.C. 5901.03(E) to provide assistance to another government agency or entity. The 2001 opinion first addressed the type of outreach program a VSC may establish under R.C. 5901.03(E). 2001 Op. Att’y Gen. No. 2001-033, at 2-197 to 2-198. The opinion concluded that a VSC “has a duty” under R.C. 5901.03(E) to establish programs that make “a systematic attempt, working together with other agencies, to increase available services specifically to veterans within the county.” *Id.* at 2-198.

The opinion further addressed whether a program sponsored or funded by another agency or entity qualifies as an outreach program for purposes of R.C. 5901.03(E). *Id.* Relying on the statute’s plain language, which states that a VSC may “establish” outreach programs together with other agencies, the opinion concluded that:

R.C. 5901.03(E) imposes upon a veterans service commission a duty to *establish* programs of the type described therein.... Thus, a program that has been founded or created by another entity to provide certain services to those in need of such services,

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- (I) Participating in appropriate memorial and commemorative activities to help promote patriotism and veterans services;
 - (J) Taking any other actions required by this chapter.

some of whom may be veterans, is not a program established by the veterans service commission pursuant to R.C. 5901.03(E).

Id. The opinion further emphasized that a VSC is directed by R.C. 5901.03(E) to establish a program whereby the VSC works with or coordinates its efforts with those of another agency “in an effort to make that agency’s services more readily available to veterans within that county.” *Id.* In fact, the opinion observes that “such a cooperative endeavor between the veterans service commission and another agency to enhance available services for veterans in the county appears to be precisely the type of program contemplated by R.C. 5901.03(E).” *Id.*

Finally, the 2001 opinion addressed whether a VSC may fund or subsidize programs that assist veterans and that are sponsored by other entities. *Id.* at 2-198 to 2-200. The opinion concluded that:

[b]ecause R.C. 5901.03(E) requires a veterans service commission to enhance available services to veterans in the county explicitly through the establishment of programs of outreach and coordination with other agencies, we do not believe that R.C. 5901.03(E) authorizes a veterans service commission simply to donate funds to other agencies or entities, even those that provide services to veterans in the county. (Footnote omitted.)

Id. at 2-200. The 2001 opinion further stated that “we do not believe that the act of making an *unrestricted grant or donation* of funds to a veterans group or other agency is encompassed within the language of R.C. 5901.03(E).” *Id.* at 2-199 (emphasis added).

Because your first three questions similarly relate to the ability of a VSC to provide assistance to another government entity, a veterans treatment court, the 2001 opinion guides our analysis of these questions.

Your first question asks whether a VSC may “utilize its funding to financially assist” a veterans treatment court. A VSC may provide financial assistance to another government agency or entity pursuant to R.C. 5901.03(E) if such assistance is made in the context of, and directed to, an outreach program established pursuant to R.C. 5901.03(E). R.C. 5901.03(E) directs a VSC to establish outreach programs under which it works with or coordinates its efforts with those of another agency “in an effort to make that agency’s services more readily available to veterans within that county.” 2001 Op. Att’y Gen. No. 2001-033, at 2-198. The duty to “establish” outreach programs requires “establishing” services apart from those already provided through separate offerings of other government entities. As noted by the 2001 opinion, “a program that has been founded or created by another entity” is not a program “established” by the VSC for purposes of R.C. 5901.03(E). *Id.*

Pursuant to R.C. 5901.03(E), a VSC may establish an outreach program that is intended to work with and support a veterans treatment court. A veterans treatment court is designed to meet the unique needs of veterans appearing as defendants before the court by offering a variety of services to such defendants. Accordingly, an outreach program established by a VSC to work with and support a veterans treatment court constitutes “a systematic attempt, working together with other agencies, to

increase available services specifically to veterans within the county” as required by R.C. 5901.03(E). *Id.*

A VSC may not, however, simply donate its funds to a veterans treatment court. *See id.* at 2-199 to 2-200. A VSC may not make an unrestricted grant or donation in which the monies contributed are to be put to use for general or unspecified purposes not specifically related to the establishment of an outreach program under the statute. *See id.* at 2-199. Had the General Assembly intended to authorize a VSC to donate its funds to another government entity, it could have done so with language that clearly expressed that intention. *See id.* at 2-200.

Further, a VSC may not establish an outreach program for the sole purpose of providing financial assistance to another government agency or entity. A VSC may not withdraw from the outreach program’s management and operation, thereby leaving those responsibilities to another government agency or entity. Rather, after establishing a program under R.C. 5901.03(E), a VSC must continue to manage and participate in that program.

Accordingly, we conclude that a VSC may provide financial assistance to a veterans treatment court to the extent that such assistance is directed to establishing and fulfilling an outreach program under R.C. 5901.03(E).

You also ask whether a VSC may, pursuant to R.C. 5901.03(E), hire a part-time employee to assist a veterans treatment court. As part of an outreach program as described above, a VSC may hire and compensate an employee to assist with that program. *See* R.C. 5901.03(A) (VSC may “[e]mploy[] such staff as are necessary to carry out the commission’s duties, and fix[] their compensation”). Such an employee may, in turn, assist a veterans treatment court. Accordingly, we conclude that a VSC may hire and compensate a person as part of an outreach program established by the VSC to work with and support a veterans treatment court, and such an employee may, in turn, assist a veterans treatment court.

If an employee is hired by a VSC, as part of an outreach program established by the VSC to assist a veterans treatment court, you ask whether that employee may work at the veterans treatment court rather than the offices of the VSC. No provision in R.C. Chapter 5901 prohibits the VSC from permitting a VSC employee to work at a location other than the VSC offices. It is not unusual for a government employee to work outside of the offices of the particular governmental entity by which he is employed. For example, county zoning inspectors, *see* R.C. 303.16, and county building inspectors, *see* R.C. 307.38, routinely travel around the county to perform their duties. Accordingly, we conclude that a VSC employee, hired as part of an outreach program established by the VSC to assist a veterans treatment court, may work at the veterans treatment court rather than the offices of the VSC.⁶

⁶ A VSC employee who works at the veterans treatment court, rather than the offices of the VSC, is nonetheless subject to the direction and control of the VSC and must comply with all policies, rules, or procedures established by the VSC, including, for example, procedures for the submission of

Authority to Use Special Project Fund Moneys Collected by a Court of Common Pleas Pursuant to R.C. 2303.201(E) to Assist a Veterans Treatment Court

Your final question asks whether moneys collected by a court of common pleas pursuant to R.C. 2303.201(E)(1) may be used to financially assist a veterans treatment court operated by a municipal court. R.C. 2303.201(E)(1) provides that a “court of common pleas may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court.” Once a court of common pleas determines that such additional funds are necessary, the court “may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession” to pay for special projects of the court. R.C. 2303.201(E)(1). Moneys collected by the court pursuant to R.C. 2303.201(E)(1) are then deposited into either a general special projects fund or fund established for a specific special project. *Id.*

Special project fund moneys may be used for any “special projects” of the court, including expenditures for staff, equipment, facilities, programs, training, or any services related to such projects. R.C. 2303.201(E); *see also* 2001 Op. Att’y Gen. No. 2001-006 (concluding that a court of common pleas may not use special projects funds generated pursuant to R.C. 2303.201(E)(1) to pay the county sheriff for security services as required by R.C. 311.07(A)).

Municipal courts also have separate special projects funds that may be used for programs that address the efficient operations of the courts. R.C. 1901.26(B)(1), which authorizes municipal courts to establish special projects funds, uses language that mirrors R.C. 2303.201(E)(1).

The courts of common pleas, when acting in an administrative capacity rather than in a judicial capacity, are creatures of statute, “having such power as is expressly delegated by the General Assembly together with such implied power as is necessary to carry into effect the power expressly delegated.” 1938 Op. Att’y Gen. No. 2308, vol. II, p. 821, at 824; *accord* 2001 Op. Att’y Gen. No. 2001-026, at 2-149. No language in R.C. 2303.201(E)(1) authorizes a court of common pleas to use the moneys collected pursuant to that provision to assist a veterans treatment court established as part of a municipal court. Rather, R.C. 2303.201(E)(1) authorizes additional funds for special projects of “the court.” As used in this provision, “the court” refers specifically to the court of common pleas. *See Brooks v. Zabka*, 168 Colo. 265, 269, 450 P.2d 653 (1969) (“[i]t is a rule of law well-established that the definite article ‘the’ particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of ‘a’ or ‘an’”); *Merriam-Webster’s Collegiate Dictionary* 1294 (11th ed. 2005) (the term “the” indicates “that a following noun or noun equivalent is definite or has been previously specified by context or by circumstance”).

A court of common pleas must have clear and distinct authority to act in financial transactions. *See, e.g., State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916). Any doubt

time records. The VSC also must ensure that the employee only performs work related to the outreach program established by the VSC while working at the veterans treatment court.

regarding a financial expenditure must be resolved “in favor of the public and against the grant of power.” *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3). R.C. 2303.201(E)(1) does not authorize a court of common pleas to provide funding to special projects of “a court” or “any court,” such as a municipal court. *See* 2009 Op. Att’y Gen. No. 2009-001 (syllabus, paragraph 1) (concluding that municipal court is not authorized to donate special projects fund moneys collected pursuant to R.C. 1901.26(B)(1) to private or county programs that “are neither established nor operated by that court”). Further, had the General Assembly intended to authorize a court of common pleas to provide moneys collected pursuant to R.C. 2303.201(E)(1) to other governmental bodies, it could have expressly so provided. *See Metro. Secs. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E 81 (1927).

Finally, as explained above, municipal courts may establish their own special projects funds pursuant to R.C. 1901.26(B)(1). This provision further indicates that the General Assembly did not intend for the municipal courts to use money collected by the common pleas courts pursuant to R.C. 2303.201(E). Accordingly, we conclude that a court of common pleas may not expend special project fund moneys collected pursuant to R.C. 2303.201(E)(1) to provide financial assistance to a veterans treatment court operated by a municipal court.

Conclusions

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

1. A veterans service commission may provide financial assistance to a veterans treatment court to the extent that such assistance is directed to establishing and fulfilling an outreach program under R.C. 5901.03(E).
2. A veterans service commission may hire and compensate a person who will work at the veterans treatment court and provide assistance to the court as specified by the terms of an outreach program established under R.C. 5901.03(E).
3. A court of common pleas may not use special project fund moneys collected pursuant to R.C. 2303.201(E)(1) to provide financial assistance to a veterans treatment court operated by a municipal court.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General