

October 21, 1997

OPINION NO. 97-049

The Honorable Mark A. Ochsenein  
Jackson County Prosecuting Attorney  
266 East Main Street  
P.O. Box 188  
Jackson, Ohio 45640

Dear Prosecutor Ochsenein:

You have requested an opinion concerning the establishment and use of a fund by the Jackson County Municipal Court in accordance with R.C. 1901.26(B)(1). As you explained to a member of my staff, the court would like to establish this fund for multiple purposes, *i.e.*, payment of salaries of current court personnel, the hiring of a bailiff and other employees, and obtaining and maintaining new court facilities. You wish to know whether the proposed expenditures of such moneys are permitted by R.C. 1901.26(B). Because municipal courts are creatures of statute, *see Hemmelgarn v. Berning*, 10 Ohio App. 3d 60, 460 N.E.2d 677 (Mercer County 1983), it is necessary to examine the terms of R.C. 1901.26(B)(1), which authorizes the establishment of the fund about which you ask.

Recently, the General Assembly amended R.C. 1901.26 in Am. Sub. H.B. 438, 121st Gen. A. (1996) (eff., in pertinent part, July 1, 1997), authorizing a municipal court to charge a fee or assessment, in addition to all other court costs, for certain purposes. Am. Sub. H.B. 438 added to R.C. 1901.26 division (B), which states in pertinent part:

(1) The municipal court may determine that, for the efficient operation of the court, *additional funds* are necessary to acquire and pay for *special projects* of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, and other related services. Upon that determination, *the court by rule 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.

If the municipal court offers a special program or service in cases of a specific type, the municipal court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The municipal court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (B) of this section shall be paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a *general special projects fund* or a *fund established for a specific special project*. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the municipal court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose. (Emphasis added.)

R.C. 1901.26(B)(1) thus authorizes municipal courts to impose certain costs, in addition to all other court costs, to provide funding for various projects, programs, or services of the court. The first paragraph of R.C. 1901.26(B)(1) authorizes a municipal court, by rule, to charge a fee, in addition to all other court costs, for the funding of "special projects" that the court determines would benefit its efficient operation. The second paragraph of R.C. 1901.26(B)(1) authorizes the court, by rule, to assess an additional charge, over and above court costs, specifically to fund special programs or services provided by the court in cases of specific types. Moneys so collected are to be deposited into either a general special projects fund or a specific special project fund.<sup>1</sup>

You question whether the expenditures proposed by the Jackson County Municipal Court fall within the types of special projects that may be funded through the fee authorized by R.C. 1901.26(B)(1). Because you have not indicated that the proposed amounts are for services or programs provided by the court in specific types of cases, whether the court may establish a charge to be used for the purposes you describe depends upon whether the first paragraph of R.C. 1901.26(B)(1) authorizes the use of such "special projects fund moneys" for the proposed expenditures you describe.

---

<sup>1</sup> To the extent there is some concern as to whether the fund containing the fee moneys may be used for multiple purposes, the portion of R.C. 1901.26(B) allowing the establishment of either a "general special projects fund" or a "fund for a specific special project" indicates that the moneys contained in one of the former types of funds may be used for more than one special project.

In order to resolve your question, it is necessary to examine more closely specific portions of R.C. 1901.26(B)(1). The purpose for which a municipal court may impose a fee under the first paragraph of R.C. 1901.26(B)(1) is simply to provide additional moneys "to acquire and pay for *special projects*" (emphasis added) beneficial to "the efficient operation of the court." Although the General Assembly has not defined the term "special projects," as used in R.C. 1901.26(B)(1), it has provided a general description of such special projects as, "*including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, and other related services,*" (emphasis added). The permissible expenditures of special projects fund moneys described in R.C. 1901.26(B)(1) are, therefore, intended only as a list of examples, not an exclusive listing of all allowable expenditures.

Examination of the list of examples suggests that the General Assembly intended to allow special projects fund moneys to be used for any "special projects" of the court, whether the expenditures are for staff, equipment, facilities, programs, or any services related to such projects. The language of R.C. 1901.26(B)(1) simply describes "special projects" as items that would benefit the court's efficient operation. At the same time, because the General Assembly has referred to the moneys generated by the imposition of such fee as "additional funds," it appears that the General Assembly intended that such moneys would supplement, but not replace, the funds otherwise provided for the court through ordinary funding mechanisms.<sup>2</sup>

Your question whether special projects fund moneys may be used for payment of specific expenses -- payment of the salaries of current court employees, employment of a bailiff and others, and obtaining and maintaining new court facilities. Because these proposed expenditures fall within the broad categories of staff, equipment, facilities, programs, or other services, for which the court may expend special projects fund moneys, it is necessary to determine whether any statutory provisions prevent the use of special projects fund moneys for the specific expenditures you describe.

With respect to the proposal to use special projects fund moneys for the employment of a bailiff, it is necessary to consider R.C. 1901.32, which states in pertinent part:

---

<sup>2</sup> Pursuant to R.C. 1901.03(F), the Jackson County Municipal Court is a "county-operated municipal court," and the Jackson County commissioners are the court's "legislative authority," R.C. 1901.03(B). In accordance with R.C. 1901.024(D), the Jackson County commissioners, as the Jackson County Municipal Court's legislative authority, "shall pay all of the costs of operation of the municipal court." Because the General Assembly has granted a municipal court's legislative authority discretion as to certain expenses of the court, *e.g.*, salaries of various court employees hired pursuant to R.C. 1901.33(A), R.C. 1901.36(A), and R.C. 1901.331, municipal courts, unlike other courts, are not always entitled to receive all funds that they request, even if such requests are reasonable. *State ex rel. Donaldson v. Alfred*, 66 Ohio St. 3d 327, 612 N.E.2d 717 (1993); *State ex rel. Cleveland Municipal Court v. Cleveland City Council*, 34 Ohio St. 2d 120, 296 N.E.2d 544 (1973).

(A) The bailiffs and deputy bailiffs of a municipal court shall be provided for, and their duties are, as follows:

(1) Except for the Hamilton county municipal court, *the court shall appoint a bailiff who shall receive the annual compensation that the court prescribes payable from the same sources and in the same manner as provided in [R.C. 1901.11]<sup>3</sup>....* (Emphasis and footnote added.)

Pursuant to R.C. 1901.32(A)(1), the Jackson County Municipal Court has a duty to appoint a bailiff whose compensation is fixed by the court and paid from the Jackson County treasury. *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) (in Ohio statutes, the word "shall" is commonly understood to be mandatory, unless there is a clear and unequivocal legislative intent to the contrary). Because the Jackson County Municipal Court has a statutory duty to appoint one bailiff, it is not clear under what circumstances payment of the compensation of this bailiff might constitute a "special project" for purposes of R.C. 1901.26(B)(1).<sup>4</sup>

The court in *State ex rel. Musser v. City of Massillon*, 12 Ohio St. 3d 42, 465 N.E.2d 400 (1984), however, concluded that the portion of R.C.1901.32(A)(1) quoted above (formerly at R.C. 1901.32(A), 1979-1980 Ohio Laws, Part II, 3168 (Am. H.B. 640, eff. June 20, 1980)) authorizes the appointment of additional bailiffs. As stated by the *Musser* court, "[t]his statute vests sole discretion for the hiring and compensation of bailiffs with the court." 12 Ohio St. 3d at 44, 465 N.E.2d at 402. Thus, if you are asking whether the court may hire an additional bailiff, it appears that R.C. 1901.32(A)(1) authorizes the court to hire and fix the compensation of an additional bailiff. Because special projects fund moneys are to be used to acquire and pay for items that would benefit the court's efficient operation, should the court choose to appoint an additional bailiff as a "special project" of the court, I can find no reason that special projects fund moneys could not be used to pay the salary of such additional bailiff.

The second proposed expenditure you describe is for the payment of the salaries of previously hired court personnel. The employment of municipal court personnel is governed by various statutes. *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 32, 222 N.E.2d 798, 800 (Stark County 1966) ("it is fully within the power of the Legislature to provide who shall pay, and in what sums, the deputy clerks in the [municipal court] clerk's office"); *Ellis v. Uerner*, 41 Ohio App. 183, 191, 180 N.E. 661, 664 (Hamilton County 1931), *aff'd*, 125 Ohio St. 246, 181 N.E. 22 (1932) ("[i]f the Legislature has the power to create municipal courts for the several cities of the state, and

---

<sup>3</sup> Pursuant to R.C. 1901.11(C), the compensation of the judges of a county-operated municipal court is paid in semimonthly installments from the treasury of the county in which the court is located.

<sup>4</sup> You have not asked about and this opinion does not address the possible use of special projects fund moneys for the hiring of deputy bailiffs under R.C. 1901.32(A)(2).

to provide for the personnel and employees to carry on the necessary functions of such courts, it is manifest that it is fully within the power of the Legislature to provide who shall pay such employees and what sums they shall be paid as compensation for their services"). A municipal court may employ only such persons as are authorized by statute. *See* 1980 Op. Att'y Gen. No. 80-073 (syllabus, paragraph one) ("[a] municipal court has no authority to appoint an administrator who serves the entire court, although it may appoint an administrator for the small claims division of the court").

The General Assembly has granted municipal court judges authority to appoint certain court employees whose compensation is prescribed by the court's legislative authority. *See, e.g.*, R.C. 1901.33(A) (interpreters, mental health professionals, probation officers, assignment commissioner, deputy assignment commissioners, other court aides, typists, stenographers, statistical clerks, and official court reporters); R.C. 1901.36(A) (requiring legislative authority to provide necessary employees for the court and to pay their compensation from the appropriate treasury in an amount prescribed by the legislative authority); R.C. 1901.331 (authorizing judge of housing or environmental division of municipal court to appoint employees whose compensation is fixed by the court's legislative authority). There are also certain municipal court employees who are appointed by the court and for whom the court may prescribe compensation. *See, e.g.*, R.C. 1901.32(A)(2) (deputy bailiffs); R.C. 1901.311 (special deputy clerks to administer branch offices). It was not until the amendment of R.C. 1901.26 in Am. Sub. H.B. 438 (eff., in pertinent part, July 1, 1997), however, that municipal courts were authorized to hire special projects staff to be paid from special projects fund moneys. Thus, municipal court employees hired prior to July 1, 1997, could not have been hired in accordance with R.C. 1901.26(B)(1) as special projects staff members. We must conclude, therefore, that R.C. 1901.26(B)(1) does not authorize the use of special projects fund moneys to pay the salaries of persons who were employed by a municipal court prior to July 1, 1997.<sup>5</sup>

---

<sup>5</sup> There may, however, be a municipal court employee who was initially hired by the court prior to July 1, 1997, to perform duties related to the court's day-to-day operations and who, after July 1, 1997, transferred to a different position with the court as a special projects staff member. In such a case, the employee's salary for work performed after such transfer as a special projects staff member may be paid from special projects fund moneys.

The final portion of your question concerns the use of special projects fund moneys for obtaining and maintaining new court facilities.<sup>6</sup> The provision of municipal court facilities is governed by R.C. 1901.36, which states in pertinent part:

(A) The legislative authority of a municipal court shall provide *suitable accommodations* for the municipal court and its officers. The legislative authority of a county-operated municipal court may pay rent for the accommodations.

The legislative authority shall provide for the use of the court suitable accommodations for a law library, complete sets of reports of the supreme and inferior courts, and such other law books and publications as are considered necessary by the presiding judge, and shall provide for each courtroom a copy of the Revised Code.

.... It shall provide all necessary form books, dockets, books of record, and all supplies, including telephone, furniture, heat, light, and janitor services, and for such other ordinary or extraordinary expenses as *it* considers advisable or necessary for the proper operation or administration of the court.

(B) The legislative authority of the municipal court shall provide suitable accommodations for the housing or environmental division of the court. The accommodations shall be in the courthouse, include at least one courtroom in which jury trials can be conducted, be located in one or more adjacent rooms, and be provided in accordance with the Rules of Superintendence for Municipal Courts and County Courts. (Emphasis added.)

Accordingly, R.C. 1901.36(A) imposes a duty upon the court's legislative authority to provide "suitable accommodations for the municipal court and its officers," as well as other supplies and equipment that the legislative authority "considers advisable or necessary for the proper operation or administration of the court." Neither R.C. 1901.36 nor any other statute of which I am aware,

---

<sup>6</sup> You have not asked and I express no opinion on the question of whether a court may commence a special project such as the acquisition of new facilities, if such project will require additional funding from the court's legislative authority. *See generally State ex rel. Musser v. City of Massillon*, 12 Ohio St. 3d 42, 46, 465 N.E.2d 400, 403 (1984) (allowing that portion of requested writ of mandamus to compel legislative authority to allow use of certain municipal facilities for accommodations for the municipal court referee, and stating, "[i]t is notable that relators are not seeking new facilities which would require additional funding, but ask only to use council chambers which is used two evenings a month for council meetings. In view of this fact and the mandatory terms of R.C. 1901.36, we find this request justified"); *State ex rel. Taylor v. City of Delaware*, 2 Ohio St. 3d 17, 18-19, 442 N.E.2d 452, 454 (1982) (allowing a writ of mandamus to compel the municipal court's legislative authority to provide suitable facilities for the court, and stating, "[i]n holding that the writ of mandamus should be allowed in this cause, this court is not unmindful of the present financial problems being experienced by political subdivisions in the state. Of necessity, those problems must be taken into account by both relator and respondents in satisfying the mandatory obligations imposed by R.C. 1901.36").

however, prevents the court from determining that other accommodations, supplies, or equipment would benefit the efficient operation of the court. Thus, should the court determine that obtaining new court facilities and the maintenance of such facilities will be beneficial to the court's efficient operation, R.C. 1901.26(B)(1) allows special projects fund moneys to be used for those purposes.

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

1. Should a municipal court decide that the appointment of an additional bailiff under R.C. 1901.32(A)(1) is a special project that would benefit the efficient operation of the court, the hiring of such additional bailiff may be funded with the moneys generated by the fee imposed in accordance with the first paragraph of R.C. 1901.32(A)(1), special projects fund moneys.
2. Because a municipal court had no authority prior to the amendment of R.C. 1901.26 in Am. Sub. H.B. 438, 121st Gen. A. (1996) (eff., in pertinent part, July 1, 1997), to hire special projects staff members whose salaries are payable from special projects fund moneys, special projects fund moneys may not be used to pay the salary of a municipal court employee hired by the court prior to that date, unless, subsequent to July 1, 1997, that person transfers to a position as a special projects staff member as provided for in R.C. 1901.26(B)(1).
3. Should a municipal court determine that obtaining new court facilities and the maintenance of such facilities is a special project that would contribute to the court's efficient operation, R.C. 1901.26(B)(1) allows special projects fund moneys to be used for those purposes.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

October 21, 1997

The Honorable Mark A. Ochsenein  
Jackson County Prosecuting Attorney  
266 East Main Street  
P.O. Box 188  
Jackson, Ohio 45640

SYLLABUS:

97-049

1. Should a municipal court decide that the appointment of an additional bailiff under R.C. 1901.32(A)(1) is a special project that would benefit the efficient operation of the court, the hiring of such additional bailiff may be funded with the moneys generated by the fee imposed in accordance with the first paragraph of R.C. 1901.32(A)(1), special projects fund moneys.
2. Because a municipal court had no authority prior to the amendment of R.C. 1901.26 in Am. Sub. H.B. 438, 121st Gen. A. (1996) (eff., in pertinent part, July 1, 1997), to hire special projects staff members whose salaries are payable from special projects fund moneys, special projects fund moneys may not be used to pay the salary of a municipal court employee hired by the court prior to that date, unless, subsequent to July 1, 1997, that person transfers to a position as a special projects staff member as provided for in R.C. 1901.26(B)(1).
3. Should a municipal court determine that obtaining new court facilities and the maintenance of such facilities is a special project that would contribute to the court's efficient operation, R.C. 1901.26(B)(1) allows special projects fund moneys to be used for those purposes.