

**From:** Gerhard Gross <GGross@eriecounty.oh.gov>  
**Sent:** Thursday, September 10, 2020 12:19 PM  
**To:** Opinions Request  
**Subject:** Formal Opinion Request from Erie County Prosecutor

Dear Attorney General Yost:

Erie County Prosecutor Kevin Baxter requests a formal opinion on the following matter:

1. Regarding county government budgeting and finance, can an actual expenditure exceed the appropriation set at the legal level of control; specifically, an expenditure for employee salary/benefits that has been appropriated at the line-item account level?
2. What is the county auditor's role in determining whether a county appointing authority has exceeded salary/benefit appropriations when presented with a payroll transmittal by that appointing authority? If processing the payroll transmittal (auditor's ministerial duty) would result in exceeding the amount in the appropriated account, what is the auditor's duty? Would the auditor have potential liability under R.C. 5705.45?
3. Does the specific position held by the appointing authority have any relevance? (i.e. a judge could order additional funds; most appointing authorities could not).
4. What impact would federal Fair Labor Standards Act (FLSA) provisions, such as "prompt pay", etc. have on paying payroll from a payroll account when the appropriation has been exceeded?

If you need clarification or any additional information, please contact Erie County Assistant Prosecutor Gerhard Gross at [ggross@eriecounty.oh.gov](mailto:ggross@eriecounty.oh.gov), or direct at 419-627-7537.

/s/ Kevin J. Baxter  
Kevin J. Baxter  
Prosecuting Attorney of Erie

County

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