August 19, 2008

Henry Guzmán, Director
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1970 West Broad Street
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SYLLABUS: 2008-029

A clerk of the court of common pleas may not expend moneys in the Automated Title Processing Fund, created under R.C. 4505.09(B)(3), to acquire ribbons for data processing if the ribbons will be used to issue motor vehicle and special vehicle certificates of title under R.C. Chapters 4505 and 4519. A clerk of the court of common pleas may expend moneys in the county certificate of title administration fund, created under R.C. 325.33, to acquire data processing ribbons used to issue motor vehicle and special vehicle certificates of title.

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OPINION NO. 2008-029

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Dear Director Guzmán:

You have requested an opinion whether the cost of "ribbons for data processing," which are used in equipment that is part of the Automated Title Processing System (ATPS) for issuing certificates of title, should be paid from State or county funds. In order to fully address your questions, we must first describe the statutory scheme that has been established by the General Assembly for titling vehicles and funding the costs thereof.

As discussed in 2008 Op. Att'y Gen. No. 2008-028, the General Assembly has created a comprehensive statutory scheme for issuing certificates of title evidencing ownership of motor vehicles, R.C. Chapter 4505, special vehicles (all-purpose vehicles and off-highway motorcycles), R.C. Chapter 4519, and watercraft and outboard motors, R.C. Chapter 1548.[1] Both the State and the counties are assigned responsibilities for implementing this scheme. At the county level, the clerks of the courts of common pleas (clerks) are charged with accepting applications for, and issuing, certificates of title for motor vehicles, special vehicles, and watercraft and outboard motors. R.C. 1548.06; R.C. 1548.08; R.C. 1548.09; R.C. 4505.06; R.C. 4505.08; R.C. 4519.55; R.C. 4519.57; R.C. 4519.58. At the State level, responsibilities are divided between the Registrar of the Bureau of Motor Vehicles (Registrar) and the Chief of the Division of Watercraft (within the Ohio Department of Natural Resources). The Registrar is responsible for administering the laws relative to certificates of title for motor vehicles and special vehicles, R.C. 4501.02(A); R.C. 4505.02; R.C. 4505.06; R.C. 4505.08(A); R.C. 4519.51; R.C. 4519.55. The Chief of the Division of Watercraft (Chief) is responsible for administering the laws relative to certificates of title for watercraft and outboard motors. R.C. 1548.01(C); R.C. 1548.02; R.C. 1548.06. *See also* R.C. 4505.09(C)(1) (establishment and duties of the Automated Title Processing Board, discussed below).

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[1] *See* R.C. 1547.01(A) and R.C. 1548.01(A) (defining "watercraft"); R.C. 1548.01(B) (watercraft to which certificate of title provisions do not apply); R.C. 4501.01(B) and R.C. 4505.01(A)(2) (defining "motor vehicle"); R.C. 4519.01(B) and (I) (defining "all-purpose vehicle" and "off-highway motorcycle").

Also as described in 2008 Op. Att'y Gen. No. 2008-028, this statutory scheme includes a state-wide "automated title processing system," into which clerks enter certificate of title information. *See* R.C. 1548.021; R.C. 1548.09; R.C. 4505.021; R.C. 4505.06; R.C. 4505.08; R.C. 4505.09(B)(3) and (C); R.C. 4519.512; R.C. 4519.55; R.C. 4519.58. *See also* R.C. 4505.09(D) (counties are required to "conform to the requirements of the registrar regarding the operation of their automated title processing system for motor vehicle titles, certificates of title for off-highway motorcycles and all-purpose vehicles, and certificates of title for watercraft and outboard motors"). *See also* 2008 Op. Att'y Gen. No. 2008-028, slip op. at 4 n.8. The General Assembly has established at the state level the Automated Title Processing Board (ATPB), the purpose of which is to "facilitate the operation and maintenance" of the ATPS and to "approve the procurement of automated title processing system equipment." R.C. 4505.09(C)(1). *See also* 2008 Op. Att'y Gen. No. 2008-028 (setting forth further discussion of the State's and counties' respective powers to administer the ATPS).

The statutory scheme provides a method for funding implementation of the certificate of title law, including operation of the ATPS. The General Assembly has established a certificate of title administration fund (CTAF) within each of the county treasuries, and the Automated Title Processing Fund (ATPF) within the state treasury. R.C. 325.33; R.C. 4505.09(B)(3). Each application for a certificate of title must be accompanied by a fee;[2] a portion of every fee imposed under R.C. Chapters 1548, 4505, and 4519 must be deposited in the appropriate county's CTAF,[3] and a portion in the ATPF.[4] R.C. 325.33; R.C. 1548.10; R.C. 4505.09(A) and

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[2] *See* R.C. 1548.032(A)(2) (a clerk shall charge a dealer a fee of five dollars for each watercraft assignment sent by the dealer to the clerk); R.C. 1548.06(C) (a clerk shall charge a penalty fee of five dollars for late filing of an application for a watercraft or outboard motor certificate of title); R.C. 1548.10 (a clerk shall charge a fee of five dollars for each watercraft or outboard motor certificate of title, memorandum certificate of title, non-negotiable evidence of ownership, duplicate copy of a certificate of title, and notation of any lien or security interest on a certificate of title); R.C. 4505.09(A) (a clerk shall charge a fee of five dollars for each motor vehicle certificate of title, certificate of title not applied for within thirty days of delivery of the motor vehicle, duplicate certificate of title, memorandum certificate of title, authorization to print non-negotiable evidence of ownership, non-negotiable evidence of ownership, and notation of a lien on a certificate of title); R.C. 4519.59(A) (a clerk shall charge a fee of five dollars for each off-highway motorcycle or all-purpose vehicle certificate of title, duplicate certificate of title, memorandum certificate of title, authorization for a dealer to print a non-negotiable evidence of ownership, non-negotiable evidence of ownership printed by the clerk for an owner, and notation of a lien on a certificate of title).

[3] The portion of each fee described in note 2, *supra*, that is retained by the clerk is set forth in R.C. 1548.06(C), R.C. 1548.10, R.C. 4505.09(A), and R.C. 4519.59(A).

The county certificate of title administration fund is credited with all of the fees that are retained by the clerk of courts for issuing certificates of title under R.C. 1548.10, R.C.

(B)(3); R.C. 4519.59(A) and (B)(3). *See also* R.C. 1548.06(A)(1); R.C. 4505.06(A)(2); R.C. 4519.55. Moneys from both funds are then used to pay the expenses of operating the ATPS, as specified by statute. *See generally* R.C. 325.33 (fees credited to the county CTAF may be used to pay only the costs incurred by the clerks in processing titles under R.C. Chapters 1548, 4505, and 4519, and in performing the duties of a deputy registrar; if money in the fund exceeds what is needed to pay these costs, however, the excess may be transferred to the county's general fund and used for other purposes); R.C. 4505.09(B)(3)(a) (money received by the Registrar under R.C. 4505.09(B)(3) and R.C. 4519.59 for certificates of title for motor vehicles and special vehicles "shall be used to implement and maintain an automated title processing system for the issuance of motor vehicle, off-highway motorcycle, and all-purpose vehicle certificates of title in the offices of the clerks of the courts of common pleas"); R.C. 4505.09(B)(3)(b) (moneys received by the Chief of the Division of Watercraft under R.C. 1548.10 "shall be used to issue marine certificates of title in the offices of the clerks of the courts of common pleas as provided in Chapter 1548. of the Revised Code"). Your questions concern whether clerks may pay for a certain item related to the operation of the ATPS from the ATPF or whether they must provide the item out of county moneys.

Expenditures

The certificate of title statutory scheme allocates payment of ATPS costs as follows. Automated title processing equipment and certificates of title "that the [ATPB] determines are necessary" are acquired by the Registrar from moneys in the ATPF. R.C. 4505.09(C)(3). As a general matter, moneys in the ATPF also are used by the clerks to provide certificates of title. R.C. 1548.02; R.C. 4505.02.

Under R.C. 4505.02, however, clerks must provide the ATPS supplies—with two exceptions. Under R.C. 1548.02, "[t]he clerks shall provide … the *ribbons for data processing*, and *removable backup media* from moneys provided to the clerks *from the automated title processing fund* in accordance with [R.C. 4505.09(B)(3)(b)]." (Emphasis added.) R.C. 1548.02

4505.09(A), and R.C. 4519.59, as well as the fees the clerk receives while acting in the capacity of deputy registrar under R.C. 4503.03. R.C. 325.33. The fund is also credited with other moneys, including fees charged by the clerk for processing physical inspection certificates, furnishing lists containing title information, performing records searches and providing written reports thereof, and for making copies of title information and attestations thereof. R.C. 4505.14; R.C. 4519.56; R.C. 4519.63. A clerk must also deposit into this fund the poundage fees he receives for collecting and disbursing the taxes that must accompany an application for a certificate of title. R.C. 1548.06(E); R.C. 4505.06(B) and (D); R.C. 4519.55.

[4] The amounts received by the Registrar or Chief from the fees described in note 2, *supra*, and the portions thereof that are paid into the ATPF may be found at 4505.09(A) and (B)(3), R.C. 4519.59(A) and (B)(3), and R.C. 1548.10. *See also* R.C. 1548.22. All investment earnings of the ATPF are credited to the ATPF. R.C. 4505.09(B)(3).

then reiterates that the clerks "shall furnish *all other supplies* from other moneys available to the clerks." (Emphasis added.)

Questions

Your first question is whether the language in R.C. 1548.02 that allows for the purchase of data processing ribbons with moneys from the ATPF applies to issuance of motor vehicle titles or whether it applies solely to watercraft titles. It is evident from the structure of the statutory scheme as described above that moneys in the ATPF may not be used to acquire ribbons for data processing used to issue certificates of title for motor vehicles. Again, the General Assembly has divided the system for issuing certificates of title among three chapters of the Revised Code—each chapter applies to a different type of vehicle. The Registrar administers R.C. Chapters 4505 and 4519, *see* R.C. 4505.02, 4519.51, while the Chief of the Division of Watercraft administers R.C. Chapter 1548, *see* R.C. 1548.02. *See also* R.C. 4505.09(B)(3)(a), (B)(3)(b), and (D). The General Assembly has likewise made a distinction between watercraft and motor vehicles in allocating the expenses of the ATPS.

Under R.C. 4505.02, clerks use moneys in the ATPF to provide certificates of title, except that "[a]ll other automated title processing system supplies shall be provided by the clerks." Under R.C. 1548.02, clerks provide from the ATPF, "the ribbons for data processing, and removable backup media," as well as the certificates of title; clerks must "furnish all other supplies from other moneys available to the clerks." R.C. 4505.02 and R.C. 1548.02 stand as parallel, independent funding provisions. The two statutes do not overlap or cross-reference each other, and they are not ambiguous—R.C. 1548.02 clearly relates only to the issuance of watercraft and outboard motor certificates of title, and has no application to motor vehicle or special vehicle certificates of title.[5]

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[5] Although R.C. 4519.51 is analogous to R.C. 4505.02 and R.C. 1548.02 in many ways, it does not identify the fund from which supplies are paid. Because the Registrar administers both R.C. Chapters 4505 and 4519 (and does not administer R.C. Chapter 1548), it is more logical to construe R.C. 4519.51 together with R.C. 4505.02 than with R.C. 1548.02, and to conclude that ribbons for data processing and backup media used to issue titles for special vehicles must be provided by the clerks.

This conclusion is supported by the structure of R.C. 4505.09(B), which separates ATPS funding for watercraft titles from funding for motor vehicle and special vehicle titles. Under division (B)(3)(a), fees collected for motor vehicle certificates of title and special vehicle certificates of title, "shall be used to implement and maintain an automated title processing system for the issuance of motor vehicle, off-highway motorcycle, and all-purpose vehicle certificates of title in the offices of the clerks of the courts of common pleas." Under division (B)(3)(b), fees collected for watercraft certificates of title "shall be used to issue marine certificates of title in the offices of the clerks of the courts of common pleas as provided in Chapter 1548. of the Revised Code." Division (B)(3) makes apparent that, in the absence of an

It is a well-established principle of statutory construction that, if the legislature had intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections. *Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926). *See also Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). By requiring generally that the clerks of court provide ATPS supplies, but making exceptions for ribbons and backup media used to issue watercraft and outboard motor certificates of title, the General Assembly has expressed clearly its intent that the clerks pay from the CTAF's the cost of ribbons and backup media used to issue certificates of title for motor vehicles and special motor vehicles under R.C. Chapter 4505 and 4519.

Your second question is whether ribbons for data processing are supplies or equipment within the context of the relevant statutory provisions. As noted above, the cost of all ATPS equipment is paid from the ATPF, as is the cost of data processing ribbons and back-up media used to issue watercraft and outboard motor certificates of title; with the exception of the data processing ribbons and back-up media used to issue watercraft and outboard motor certificates of title, the cost of ATPS supplies is paid from the CTAF. The certificate of title statutory scheme does not define the terms "supplies" or "equipment." In this context, however, it is obvious that the General Assembly intended that ribbons be treated as supplies.

R.C. 1548.02 reads: "The clerks shall provide the certificates of title, the ribbons for data processing, and removable backup media from moneys provided to the clerks from the automated title processing fund in accordance with [R.C. 4505.09((B)(3)(b)]. The clerks shall furnish *all other supplies* from other moneys available to the clerks." (Emphasis added.) This language clearly implies that the ribbons and backup media are supplies.[6]

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express provision to the contrary, the issuance of motor vehicle certificates of title and the issuance of certificates of title for special vehicles should be funded in the same manner. Nothing in the statutory scheme suggests that the allocation of expenses under R.C. 1548.02 for watercraft certificates of title applies to the issuance of certificates of title for special vehicles under R.C. Chapter 4519.

[6] If data processing ribbons were considered to be equipment, the language in R.C. 1548.02 providing for the payment of ribbons from the ATPF would be superfluous since ATPS equipment is paid from the ATPF. R.C. 4505.09(C)(3). Such an interpretation violates the canons of statutory construction. *See Columbus-Suburban Coach Lines, Inc. v. Public Utilities Commission*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969) ("[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E. 2d 370 (1948) (syllabus,

This interpretation is consistent with the terms' common meanings. *See* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). *Webster's Third New International Dictionary* 768, 2297 (1993) defines "equipment" as "all the fixed assets other than land and buildings of a business enterprise," and "supply" as "items or a quantity … available for use, exploitation, or development or esp. set aside to be dispensed at need." Supplies are typically consumed directly in production and have a relatively short useful life, whereas equipment is not directly consumed in production, and has a longer useful life. For example, the State budgeting and accounting system incorporates "expense account categories"—including one for "supplies and maintenance" that is used for "expendable goods and supplies such as utilities, gasoline, postage, paper, pens, repair and travel," and one for "equipment" that is used for "durable goods such as computers, furniture or vehicles." Office of Budget and Management, Operating Budget Guidance for Fiscal Years 2010-2111, Appendix A.[7] Rules promulgated by the Auditor of State for accounting and reporting by local public offices direct that "capital assets," which are "tangible assets that normally do not change form with use," "should be distinguished from repair parts and supply items." 2 Ohio Admin. Code 117-2-02(D)(4)(c) (Aug. 19, 2007 Supp.). As another example, the Federal Accounting Standards Advisory Board's Statements of Federal Financial Accounting Concepts and Standards (Original Pronouncements, Version 6, June 30, 2007) (SFFAS 6) define "property, plant, and equipment" as "tangible assets, including land," that, *inter alia*, "have estimated useful lives of 2 years or more." SFFAS 6, Chapter 2, ¶ 17. They exclude items "held in anticipation of physical consumption such as operating materials and supplies." SFFAS 6, Chapter 2, ¶ 19. Data processing ribbons are consumed directly in production and have a relatively short useful life. They are more accurately described as "supplies" than as "equipment," as those terms are commonly understood.

Just as data processing ribbons are "supplies" under R.C. 1548.02, they are "supplies" for purposes of R.C. 4505.02 (supplies are provided by the clerks) and R.C. 4505.09(C)(3) (equipment is acquired from moneys in the ATPF). Again, this interpretation comports with the common meaning of the term. Furthermore, statutes relating to the same subject matter should be construed *in pari materia* and read together. *Bobb v. Marchant*, 14 Ohio St. 3d 1, 3, 469 N.E.2d 847 (1984); *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph 2). R.C. 4505.02 and R.C. 1548.02 are part of the same statutory scheme

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paragraph 5) ("significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act").

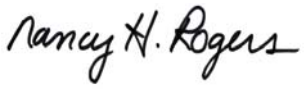
[7] OBM's Operating Budget Guidance for FY 2010-2111 may be found at http://www.obm.ohio.gov/budget/operating/executive/guidance/1011/Appendix%20A%20Glossary%20of%20Terms.pdf (last visited July 23, 2008).

governing the manner in which vehicles are titled in Ohio, specifically the manner in which the administration of the certificate of title law is funded. Therefore, in the absence of an express provision otherwise, items that constitute supplies under one chapter constitute supplies under the other.

Therefore, we conclude that data processing ribbons are supplies, not equipment. This line of analysis leads us to the same result reached in response to your first question—ATPS data processing ribbons used to issue motor vehicle and special vehicle certificates of title may not be acquired by clerks with moneys in the ATPF.

In conclusion, it is my opinion, and you are advised that, a clerk of the court of common pleas may not expend moneys in the Automated Title Processing Fund, created under R.C. 4505.09(B)(3), to acquire ribbons for data processing if the ribbons will be used to issue motor vehicle and special vehicle certificates of title under R.C. Chapters 4505 and 4519. A clerk of the court of common pleas may expend moneys in the county certificate of title administration fund, created under R.C. 325.33, to acquire data processing ribbons used to issue motor vehicle and special vehicle certificates of title.

Respectfully,



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