

OPINION NO. 97-016**Syllabus:**

Absent statutory authority, a court of common pleas is not authorized to change the terms of an individual's probation after the individual has commenced the execution of his sentence.

To: Joseph Flautt, Perry County Prosecuting Attorney, New Lexington, Ohio
By: Betty D. Montgomery, Attorney General, April 10, 1997

Your predecessor requested an opinion concerning the authority of a court of common pleas to require an individual, as a condition of probation, to pay a monthly supervision fee for supervision services. By way of background, your predecessor stated that the Perry County Court of Common Pleas has established a county probation department pursuant to R.C. 2301.27(A). In accordance with the provisions of R.C. 2951.021, individuals placed on probation and supervised by the county department of probation are required as a condition of probation to pay a monthly supervision fee for supervision services.

Prior to the creation of the county probation department, individuals placed on probation by the court of common pleas were supervised by the adult parole authority (APA) pursuant to an agreement entered into by the court and the APA under R.C. 2301.32(B). The probation of individuals supervised by the APA was not conditioned on the payment of a monthly supervision fee. Because the supervision of these probationers has been transferred to the county department of probation, the court of common pleas would like these individuals to pay the monthly supervision fee for supervision. Information provided does not indicate that the individuals in question have consented to the payment of the monthly supervision fee, thus, it is assumed for purposes of this opinion, that the individuals have not voluntarily agreed to pay the supervision fee. In light of these facts, your predecessor's specific question was as follows: May a court of common pleas require, as an additional condition of probation, an individual who has commenced the execution of his sentence to pay a monthly supervision fee for supervision.

The fundamental issue raised by your predecessor's question is whether a court of common pleas is authorized to change the terms of an individual's probation after the individual has

commenced the execution of his sentence. It is a basic principle of criminal law in Ohio that "once a valid sentence has been executed, a trial court no longer has the power to modify the sentence except as provided by the General Assembly." *State v. Hayes*, 86 Ohio App. 3d 110, 112, 619 N.E.2d 1188, 1189 (Hamilton County 1993); accord *State v. Papa*, 66 Ohio App. 3d 146, 583 N.E.2d 1044 (Cuyahoga County 1990); *State v. Addison*, 40 Ohio App. 3d 7, 530 N.E.2d 1335 (Franklin County 1987). Applying this principle of law, appellate courts in Ohio have determined that, absent statutory authority, trial courts may not change the terms of an individual's probation after he has commenced the execution of his sentence. *State v. Hayes*; *State v. Fair*, C.A. No. 14343, 4 Ohio App. Unrep. 350, 1990 Ohio App. LEXIS 2366 (Summit County 1990); *State v. Papa*.

In this regard, *State v. Hayes*, which examined the propriety of a trial court imposing additional conditions of probation upon granting a probationer's motion for the transfer of his probation supervision to another county, stated:

Since matters involving probation are governed by statute, viz., R.C. Chapter 2951, it is manifest that a trial court's authority to modify the terms and conditions of a sentence of probation must be provided for by the legislature.

The provisions of R.C. Chapter 2951 that have possible relevance to the trial court's authority in the present case are contained in R.C. 2951.02, 2951.05, 2951.07, and 2951.09. R.C. 2951.02 addresses only the initial imposition of probation and does not discuss subsequent modification of the requirements originally imposed upon a probationer. R.C. 2951.05 provides for the transfer of control and supervision of a defendant on probation, and states that the trial judge maintains jurisdiction over the person of the defendant, but again no authority is given to the trial judge to modify the conditions of probation upon such a transfer. Under R.C. 2951.07, the trial judge may extend the period of probation to a limit of five years; no other modification is authorized. Finally, R.C. 2951.09 authorizes the judge to terminate a probation, or to continue a probation and, arguably, to impose new conditions upon the defendant, but the section applies only in the context of probation revocation proceedings.

In the present case, the trial court dismissed the probation violation charges against Hayes; therefore, there were no probation revocation proceedings pending and R.C. 2951.09 did not authorize the trial court to impose additional conditions of probation. The granting of the motion to transfer probation supervision was not, pursuant to R.C. 2951.05, a valid fundament for the imposition of additional conditions, especially in light of the fact that the motion had already been granted three times before and was not, therefore, pending at the time of the trial court's order. Accordingly, we conclude that the trial court acted without authority in imposing additional conditions of probation upon Hayes without his knowledge or consent, and we sustain the single assignment of error.

Id., 86 Ohio App. 3d at 112-13, 619 N.E.2d at 1189-90. Thus, absent statutory authority, a court of common pleas is not authorized to change the terms of an individual's probation after the individual has commenced the execution of his sentence.

With respect to your predecessor's specific inquiry, no provision in R.C. Chapter 2951, which concerns the granting and revocation of probation, authorizes a court of common pleas to impose additional conditions of probation upon an individual who is currently on probation when

the responsibility for his probation supervision is transferred from the APA to a county department of probation. The transfer of the supervision of an individual's probation from the APA to the county department of probation, therefore, is not a valid reason for the imposition of additional conditions. Accordingly, a court of common pleas may not require, as an additional condition of probation, an individual who has commenced the execution of his sentence to pay a monthly supervision fee for supervision.

Based on the foregoing, it is my opinion and you are advised that, absent statutory authority, a court of common pleas is not authorized to change the terms of an individual's probation after the individual has commenced the execution of his sentence.