December 29, 1997

OPINION NO. 97-058

The Honorable Gregory A. White
Lorain County Prosecuting Attorney
226 Middle Avenue, 4th Floor
Elyria, Ohio 44035

Dear Prosecutor White:

You have requested an opinion concerning the distribution of moneys to a law library association under R.C. 3375.50. Specifically, you wish to know:

1.Does the term "penalties," as used in R.C. 3375.50, include court costs?

2.Are fines and court costs collected by, and moneys arising from forfeited bail in, a municipal court for offenses brought for prosecution in the name of the state included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D)?

3.Except for fines collected by a municipal court for violations of R.C. 4513.263(B) or for violations of any municipal ordinance that is substantively comparable to that division, are there any other fines or court costs collected by a municipal court that are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D)?

Your first question asks whether the term "penalties," as used in R.C. 3375.50, includes court costs. R.C. 3375.50, which provides moneys for the maintenance and operation of a law library association, states, in pertinent part:

> *All fines and penalties collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for*

> *prosecution in the name of the state*, except a portion of such fines, penalties, and moneys which, plus all costs collected monthly in such state cases, equal the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases, *shall be retained by the clerk of such municipal court, and be paid by him forthwith, each month, to the board of trustees of the law library association in the county in which such municipal corporation is located.* The sum so retained and paid by the clerk of the municipal court to the board of trustees of such law library association shall, in no month, be less than twenty-five per cent of the amount of such fines, penalties, and moneys received in that month, without deducting the amount of the allowance of the board of county commissioners to the judges, clerk, and prosecuting attorney. (Emphasis added.)

R.C. 3375.50 thus provides, *inter alia*, for the disposition of "penalties" collected by a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state.

The term "penalties" is not defined for purposes of R.C. 3375.50. Where a term has not acquired a technical or particular meaning by legislative definition or otherwise, the common or plain meaning of the term is used. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983).

Black's Law Dictionary 1133-34 (6th ed. 1990) defines the term "penalty," the singular of the term "penalties," as follows:

> An elastic term with many different shades of meaning; it involves idea of punishment, corporeal or pecuniary, or civil or criminal, although its meaning is generally confined to pecuniary punishment.
> ....
> A penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done.
> *See also* Fine; Forfeiture; Penal action; Statutory penalty. (Citations omitted.)

See generally R.C. 2929.02-.06 (penalties for murder); R.C. 2929.11-.20 (penalties for felonies); R.C. 2929.21-.25 (penalties for misdemeanors); R.C. 2929.31 (organizational penalties). Accordingly, for purposes of R.C. 3375.50, the term "penalties" means sums of money that persons are required by law to pay to a municipal court for violations of a municipal ordinance or state statute.

In contrast, court costs are fees and charges required by law to be paid to the courts for services provided during the course of a criminal or civil proceeding. As stated in *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925, 926 (1982):

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors, and others are entitled for their services in an action *** and which the statutes authorize to be taxed and included in the judgment ***. *** Costs did not necessarily cover all of the expenses and they were distinguishable from fees and disbursements. They are allowed only by authority of statute ***." *State, ex rel. Commrs. of Franklin County, v. Guilbert* (1907), 77 Ohio St. 333, 338-339, [83 N.E. 80,] quoted, in part, with approval in *Brenda v. Fana* (1967), 10 Ohio St. 2d 259, 262-263[, 227 N.E.2d 197].

Today, we reaffirm the principle that "[t]he subject of costs is one entirely of statutory allowance and control." *State, ex rel Michaels, v. Morse* (1956), 165 Ohio St. 599, 607, [138 N.E.2d 660,] quoted with approval in *Sorin v. Bd. of Edn.* (1976), 46 Ohio St. 2d 177, 179[, 347 N.E.2d 527].

See generally Black's Law Dictionary 346 (6th ed. 1990) (defining the term "costs" as "[f]ees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by statute or court rule; *e.g.* filing and service fees").

Accordingly, court costs in a criminal case are imposed against a defendant by a court in order to defray certain expenses associated with the prosecution of the criminal case against the defendant. *See* R.C. 2947.23 ("[i]n all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs"). *See generally State ex rel. Judson v. Coates,* 8 Ohio N.P. 682, 683-84, 11 Ohio Dec. 670, 672-73 (C.P. Cuyahoga County 1901) (noting that the policy of judicial administration has always required individual suitors to pay at least part of the expenses of the courts while other costs are absorbed by the public treasury). Court costs are not imposed against an individual because he has violated a municipal ordinance or state statute. Court costs thus do not constitute a penalty. Therefore, the term "penalties," as used in R.C. 3375.50, does not include court costs. *See also* 1975 Op. Att'y Gen. No. 75-045 (syllabus) ("costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury"); 1928 Op. Att'y Gen. No. 2041, vol. II, p. 1058 (syllabus, paragraph two) ("[t]he Lucas County Law Library Association is not entitled to any percentage of _costs_ collected in state cases prosecuted in the Municipal Court of Toledo").

Additional support for the aforementioned conclusion may be gleaned from the specific language of R.C. 3375.50. It is a cardinal principle of statutory construction that the legislature is presumed to have used terms intelligently and advisedly. *Wachendorf v. Shaver,* 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948); *Watson v. Doolittle,* 10 Ohio App. 2d 143, 147, 226 N.E.2d 771, 774 (Williams County 1967). Thus, it is significant that the General Assembly chose to use the word "costs" in R.C. 3375.50 when referring to the moneys that are to be used to pay the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases. In this regard, R.C. 3375.50 provides that all fines and penalties collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation

under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state shall be paid to the board of trustees of the law library association in the county in which such municipal corporation is located, "*except a portion of such fines, penalties, and moneys which, plus all costs collected monthly in such state cases*, equal the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases." (Emphasis added.)

If the term "penalties" included court costs, it would have been unnecessary for the General Assembly to state that court costs collected monthly in state cases are to be used to pay the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases. Such result would have obtained if the language "plus all costs collected monthly in such state cases" had been omitted from the statute. It may be presumed, therefore, that the use of the term "costs" in R.C. 3375.50 by the General Assembly indicates a legislative intent that the term "penalties," as used in R.C. 3375.50, does not include court costs. *See generally Brown v. Martinelli*, 66 Ohio St. 2d 45, 50, 419 N.E.2d 1081, 1084 (1981) (it is a "_basic presumption in statutory construction that the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose_" (quoting *State ex rel. Cleveland Elec. Illum. Co. v. Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756, 759 (1959), *appeal dismissed*, 362 U.S. 457 (1960))).

Your second question asks whether fines and court costs collected by, and moneys arising from forfeited bail in, a municipal court for offenses brought for prosecution in the name of the state are included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). R.C. 3375.50(D) sets forth the formula for determining the maximum amount that the clerk of a municipal court in a county with a population in excess of one hundred fifty thousand is to pay to the board of trustees of a law library association. *See* 1960 Op. Att'y Gen. No. 1114, p. 57. Specifically, R.C. 3375.50(D) provides:

> The total amount paid under this section in any one calendar year by the clerks of all municipal courts in any one county to the board of trustees of such law library association shall in no event exceed the following amounts:
>
> ....
>
> (D) In counties having a population of in excess of one hundred fifty thousand, fifteen thousand dollars in any calendar year. The maximum amount to be paid by each such clerk shall be determined by the county auditor in December of each year for the next succeeding calendar year, and shall bear the same ratio to the *total amount payable under this section* from the clerks of all municipal courts in such county as the total fines, costs, and forfeitures received by the corresponding municipal court, bear to the total fines, costs, and forfeitures received by all the municipal courts in the county, as shown for the last complete year of actual receipts, on the latest available budgets of such municipal courts. Payments in the full amounts provided in this section shall be made monthly by each clerk in each

> calendar year until the maximum amount for such year has been paid. When such amount, so determined by the auditor, has been paid to the board of trustees of such law library association, then no further payments shall be required in that calendar year from the clerk of such court. (Emphasis added.)

The plain language of this division indicates that the phrase "total amount payable" refers to all moneys disbursed to a law library association pursuant to R.C. 3375.50. *See* 1960 Op. Att'y Gen. No. 1114, p. 57 (syllabus, paragraph two); 1952 Op. Att'y Gen. No. 1635, p. 515 (syllabus, paragraph two). As stated above, R.C. 3375.50 requires the clerk of a municipal court to disburse to a law library association all fines collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in the name of the state, except a portion of such fines and moneys which, plus all costs collected monthly in such state cases, equals the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases. *See* 1961 Op. Att'y Gen. No. 2216, p. 271 at 273; *see also* R.C. 1901.31(F) (subject to R.C. 3375.50, the clerk of a municipal court "shall pay all fines collected for the violation of state laws into the county treasury"). *But see generally Warren County Law Library Ass'n v. Parker*, 50 Ohio Op. 161, 162, 65 Ohio Law Abs. 545, 546 (C.P. Warren County 1952) ("[s]ince moneys collected by mayor for fines in a state case never become the property of a municipal corporation and, therefore, are never in the municipal or village treasury, it is our opinion that moneys so collected do not come within the scope of funds collected by a municipal corporation under Section 3056, General Code [now R.C. 3375.50]"). Moreover, as concluded above, the language of R.C. 3375.50 does not mandate that the clerk of a municipal court disburse court costs collected by him to a law library association.

Where the language of a statute is clear and unequivocal, the statute is to be applied, not interpreted. *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442, 444 (1994); *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). Accordingly, fines collected by, and moneys arising from forfeited bail in, a municipal court for offenses brought for prosecution in the name of the state are included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). However, court costs collected by a municipal court for offenses brought for prosecution in the name of the state are not included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

Your final question asks whether there are other fines or court costs collected by a municipal court that are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D), other than fines collected by a municipal court for violations of R.C. 4513.263(B)[1] or for violations of any municipal

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[1] R.C. 4513.263(B) provides:

> No person shall do any of the following:
> (1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device, or

ordinance that is substantively comparable to that division.[2] As determined above, court costs collected by a municipal court are not included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). As such, all court costs collected by a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state are not included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).[3]

With respect to fines collected by, and moneys arising from forfeited bail in, a municipal court, R.C. 3375.50 states that:

> operate a school bus that has an occupant restraining device installed for use in its operator's seat unless that person is wearing all of the available elements of the device, as properly adjusted;
> (2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device;
> (3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device;
> (4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are maintained in usable form.

[2] R.C. 3375.50(E) excepts fines collected by a municipal court for violations of R.C. 4513.263(B) or for violations of any municipal ordinance that is substantively comparable to that division from the disbursement provisions of R.C. 3375.50. R.C. 3375.50(E) states:

> This section does not apply to fines collected by a municipal court for violations of division (B) of section 4513.263 of the Revised Code, or for violations of any municipal ordinance that is substantively comparable to that division, all of which shall be forwarded to the treasurer of state as provided in division (E) of section 4513.263 of the Revised Code.

[3] In your letter, you refer specifically to court costs imposed pursuant to R.C. 1901.26, R.C. 1901.261, R.C. 1907.24, R.C. 2303.201, R.C. 2743.70, and R.C. 2949.091. Based on the analysis set forth in the above text, court costs collected by a municipal court under R.C. 1901.26, R.C. 1901.261, R.C. 1907.24, R.C. 2303.201, R.C. 2743.70, and R.C. 2949.091 are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

> *All fines and penalties collected by, and moneys arising from forfeited bail in, a municipal court* for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state, except a portion of such fines, penalties, and moneys which, plus all costs collected monthly in such state cases, equal the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases, *shall be retained by the clerk of such municipal court, and be paid by him forthwith, each month, to the board of trustees of the law library association in the county in which such municipal corporation is located.* (Emphasis added.)

Thus, fines collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state are to be disbursed in accordance with the provisions of R.C. 3375.50. *See* R.C. 1901.31(F).

The only exceptions specifically listed in R.C. 3375.50 to the foregoing disbursement requirement are for fines collected by, and moneys arising from forfeited bail in, a municipal court for violations of R.C. 4513.263(B), or for violations of any municipal ordinance that is substantively comparable to that division. These exceptions are set forth in R.C. 3375.50(E). *See* footnote two, *supra*; *see also* R.C. 2937.36(A) (upon the declaration of forfeiture, the clerk of a municipal court "adjudging forfeiture shall proceed as follows: (A) As to each bail, he shall proceed forthwith to deal with the sum deposited as if the same were imposed as a fine for the offense charged and distribute and account for the same accordingly"). It is, however, a codified rule of statutory construction that, if the provisions of two statutes are determined to be in conflict, and if the conflict is irreconcilable, "the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." R.C. 1.51; *accord Cincinnati v. Bossert Mach. Co.*, 16 Ohio St. 2d 76, 79, 243 N.E.2d 105, 107 (1968), *cert. denied*, 394 U.S. 998 (1969). Thus, if it is determined that a statute that conflicts with the disbursement provisions of R.C. 3375.50 is special and that R.C. 3375.50 is a general statute, the provisions of the special statute will prevail as an exception to R.C. 3375.50, unless R.C. 3375.50 is the later adoption and the manifest intent is that R.C. 3375.50 prevail. R.C. 1.51; *see* 1935 Op. Att'y Gen. No. 4507, vol. II, p. 968 (syllabus) ("[n]o part of the fines collected by a municipal court for violations of the Liquor Control Act should be considered in computing the amount that a municipal court should pay to a county law library association under the provisions of Section 3056, General Code [now R.C. 3375.50]"); *see also* 1989 Op. Att'y Gen. No. 89-103; 1952 Op. Att'y Gen. No. 1132, p. 107.

As determined above, moneys not disbursed to a law library association under R.C. 3375.50 are not included within the total amount payable when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). Further, fines collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in

the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state that are excepted from the disbursement provisions of R.C. 3375.50 by another provision of state law are not subject to the disbursement provisions of R.C. 3375.50, and thus are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

The determination whether a particular statute is special or general in a given situation is one that must be made on a case-by-case basis. As stated in 1989 Op. Att'y Gen. No. 89-103 at 2-500 n.7:

> The determination as to whether a statute is general or special in character must be made in light of the statute with which it is to be compared. A given statute may be regarded as general when compared to a more narrowly tailored statute on the same subject, and special when viewed with regard to a more general or broad statute on the subject. *See generally State ex rel. Ehmann v. Schneider*, 78 Ohio App. 27, 31, 67 N.E.2d 117, 120 (Hamilton County 1946) ("[f]or purposes of interpretation of legislative enactments, enactments have long been classed as either general or special, and given different effect upon other enactments dependent as they are found to fall in one class or the other").

Because there are numerous provisions within the Revised Code that impose a fine for the violation of a state statute, it is impossible by way of a formal opinion of the Attorney General to compare each and every one of these provisions with R.C. 3375.50. However, because your letter refers to fines imposed for violations of R.C. Chapter 2925 (drug offenses) and R.C. 4511.19 (driving while intoxicated), we will examine the disposition of such fines.

Provisions for the disposition of fines collected for violations of R.C. Chapter 2925 are set forth in R.C. 3719.21. This section provides as follows:

> Except as provided in divisions (D)(1), (F), and (H) of section 2925.03, division (D)(1) of section 2925.02, 2925.04, or 2925.05, division (E)(1) of section 2925.11, division (F) of section 2925.13[4] or 2925.36, division (D) of section 2925.22, division (H) of section 2925.23, division (M) of section 2925.37, division (B)(5) of section 2925.42, division (B) of section 2929.18, division (D) of section 3719.99, division (B)(1) of section 4729.65, and division (E)(3) of section 4729.99 of the Revised Code, the clerk of the court shall pay all fines or forfeited bail assessed and collected

[4] There is currently no division (F) in R.C. 2925.13. However, division (E) of R.C. 2925.13 provides for the disposition of fines collected for violations of R.C. 2925.13. It thus appears that the General Assembly intended to except fines disbursed pursuant to R.C. 2925.13(E) from the provisions of R.C. 3719.21. *See* Am. Sub. S.B. 269, 121st Gen. A. (1996) (eff. June 28, 1996) (moving the provisions of former R.C. 2925.13(F) to R.C. 2925.13(E)).

> under prosecutions or prosecutions commenced for violations of this chapter or Chapter 2925. of the Revised Code, within thirty days, to the executive director of the state board of pharmacy, and the executive director shall deposit the fines into the state treasury to the credit of the occupational licensing and regulatory fund. (Footnote added.)

Thus, except as provided in R.C. 2925.03(D)(1), (F), and (H), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(E), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), and R.C. 2925.42(B)(5), fines for violations of R.C. Chapter 2925 are to be paid to the Executive Director of the State Board of Pharmacy. Fines collected pursuant to the provisions of R.C. 2925.03(D)(1), (F), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(E), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), and R.C. 2925.42(B)(5) are disbursed to the county, township, municipal corporation, park district, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of and prosecuting the offender. In addition, pursuant to R.C. 2925.03(H), a fine imposed under division (H)(1) of R.C. 2925.03 must be used solely for the support of one or more eligible alcohol and drug addiction programs. Thus, it is readily apparent from the foregoing that the disposition of a fine imposed for a violation of R.C. Chapter 2925 is controlled by R.C. 3375.50 and one of the following: R.C. 2925.03(D)(1), (F), or (H), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(E), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), R.C. 2925.42(B)(5), or R.C. 3719.21. It, therefore, must be determined whether the General Assembly intended the foregoing provisions of R.C. Chapter 2925 and R.C. 3719.21 to prevail as exceptions to R.C. 3375.50.

In 1989 Op. Att'y Gen. No. 89-103, it was determined that R.C. 3375.52, a statute analogous to R.C. 3375.50,[5] does not control the disbursement of fines assessed and collected under prosecutions commenced for violations of R.C. Chapter 2925. In so determining, the opinion reasoned as follows:

> R.C. 3375.52 is a general provision in that it delineates the disposition of all fines, penalties, and moneys arising from forfeited bail for offenses and misdemeanors brought for prosecution in courts of common pleas and probate courts. R.C. 3719.21 and R.C. 2925.03(J), however, are special statutes when construed with R.C.

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[5] R.C. 3375.52 provides that clerks of the courts of common pleas and probate courts shall pay "all fines and penalties collected by, and moneys arising from forfeited bail ... for offenses and misdemeanors brought for prosecution in such courts in the name of the state ... to the board of trustees of the law library association." *See generally Day v. Wilson*, 55 Ohio Op. 347, 349, 124 N.E.2d 480, 482 (C.P. Portage County 1954) (R.C. 3375.52 "makes substantially the same command [as R.C. 3375.50] as to clerks of Common Pleas and Probate Courts; that is, that such clerk in dealing with a similar fund in those courts *shall retain and pay* monthly to the board of trustees of the Law Library Association").

> 3375.52. R.C. 3719.21 specifically requires that only fines and forfeited bonds assessed and collected under R.C. Chapters 2925 and 3719 be paid to the executive director of the State Board of Pharmacy. Similarly, R.C. 2925.03(J) covers only mandatory drug fines imposed pursuant to R.C. 2925.03(H). Also both R.C. 3719.21, 1935 Ohio Laws, Part I, 491, 502 (H.B. 163, passed May 23, 1935), and R.C. 2925.03(J), 1985-1986 Ohio Laws, Part I, 164, 168-70 (Am. S.B. 67, eff. Aug. 29, 1986), were enacted after the adoption of the provision of R.C. 3375.52, which required clerks of courts of common pleas and probate courts to make disbursements to a law library association, 1910 Ohio Laws 295 (S.B. 85, passed May 10, 1910). "Utilizing the rules of statutory construction contained in R.C. 1.12, 1.51, and 1.52, a specific statute, enacted later in time than a preexisting statute, will control where a conflict between the two arises." Further, a presumption exists that the General Assembly enacts legislation in light of all prior legislation on the subject. Consequently, R.C. 3719.21 creates an exception to R.C. 3375.52 with respect to the disbursement of fines collected in a court of common pleas for prosecutions under R.C. Chapters 2925 and 3719. Likewise, the more specific disbursement provisions of R.C. 2925.03(J) create an exception to the general disbursement provisions set forth in R.C. 3375.52 with respect to mandatory drug fines collected by a court of common pleas.
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> Accordingly, I find that, pursuant to R.C. 3719.21, fines collected under prosecutions commenced for violations of R.C. Chapters 2925 and 3719 are disbursed to the executive director of the State Board of Pharmacy and by him to the state treasury to the credit of the general revenue fund with the exception that mandatory drug fines collected under R.C. 2925.03 are paid to the law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. (Citations and footnotes omitted.)

1989 Op. Att'y Gen. No. 89-103 at 2-503 through 2-504; *accord* 1990 Op. Att'y Gen. No. 90-022.

Based on the analysis set forth in 1989 Op. Att'y Gen. No. 89-103, we similarly conclude that R.C. 3375.50, as in the case of R.C. 3375.52, does not control the disbursement of fines assessed and collected under prosecutions commenced for violations of R.C. Chapter 2925. R.C. 3375.50 is a general statute that controls the disposition of *all fines* brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state. In contrast, R.C. 2925.03(D)(1), (F), and (H), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(E), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), R.C. 2925.42(B)(5), and R.C. 3719.21 are limited in application to fines collected for violations of R.C. Chapters 2925 and 3719. Moreover, the disbursement provisions of these provisions of R.C. Chapter 2925 and R.C. 3719.21 were enacted after R.C. 3375.50. *See* Am. Sub. S.B. 2, 121st Gen. A. (1995) (eff. July 1, 1996) (enacting the foregoing disbursement provisions of R.C. Chapter 2925); 1935 Ohio Laws, Part I, 491, 502 (H.B. 163, passed May 23, 1935) (enacting G.C. 12672-19 (now R.C. 3719.21)); 1910 Ohio Laws 295 (S.B. 85, passed May 10, 1910) (enacting G.C. 3056 (now R.C. 3375.50)).

In light of the foregoing, it appears that the General Assembly intended for R.C. 2925.03(D)(1), (F), and (H), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(E), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), R.C. 2925.42(B)(5), and R.C. 3719.21 to prevail as exceptions to R.C. 3375.50. Accordingly, pursuant to R.C. 2925.03(D)(1), (F), and (H), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(E), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), R.C. 2925.42(B)(5), and R.C. 3719.21, fines collected under prosecutions commenced for violations of R.C. Chapters 2925 and 3719 are excepted from the disbursement provisions of R.C. 3375.50.

As noted above, moneys not disbursed to a law library association under R.C. 3375.50 are not included within the total amount payable when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). Therefore, fines collected by a municipal court for violations of R.C. Chapter 2925 are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

Let us now turn to the disposition of fines imposed for violations of R.C. 4511.19, which sets forth prohibitions against driving while under the influence of alcohol and drugs.[6] R.C. 4513.35 states:

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[6] R.C. 4511.19 provides in pertinent part:

> (A) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply:
> (1) The person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
> (2) The person has a concentration of ten-hundredths of one per cent or more by weight of alcohol in his blood;
> (3) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his breath;
> (4) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his urine.
> (B) No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply:
> (1) The person has a concentration of at least two-hundredths of one per cent but less than ten-hundredths of one per cent by weight of alcohol in his blood;
> (2) The person has a concentration of at least two-hundredths of one gram but less than ten-hundredths of one gram by weight of alcohol per two hundred ten liters of his breath;
> (3) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than fourteen-hundredths of one gram by weight of alcohol per one hundred milliliters of his urine.

> (A) All fines collected under sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code shall be paid into the county treasury and, with the exception of that portion distributed under section 3375.53 of the Revised Code, shall be placed to the credit of the fund for the maintenance and repair of the highways within that county, except that:
> (1) All fines for violations of division (B) of section 4513.263 shall be delivered to the treasurer of state as provided in division (E) of section 4513.263 of the Revised Code.
> (2) All fines collected from, or moneys arising from bonds forfeited by, persons apprehended or arrested by state highway patrolmen shall be distributed as provided in section 5503.04 of the Revised Code.
> (3)(a) Subject to division (E) of section 4513.263 of the Revised Code and except as otherwise provided in division (A)(3)(b) of this section, one-half of all fines collected from, and one-half of all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer shall be paid to the township treasury to be placed to the credit of the general fund.
> (b) All fines collected from, and all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer pursuant to division (B)(2) of section 4513.39 of the Revised Code for a violation of section 4511.21 of the Revised Code or any other law, ordinance, or regulation pertaining to speed that occurred on a highway included as part of the interstate system, as defined in section 5516.01 of the Revised Code, shall be paid into the county treasury and be credited as provided in the first paragraph of this section.

An examination of R.C. 3375.50 and R.C. 4513.35 discloses that these two statutes conflict with respect to the disposition of moneys collected for violations of R.C. 4511.19. However, R.C. 3375.50 is a general statute compared to R.C. 4513.35 for the reason that R.C. 3375.50 covers all fines collected for offenses brought for prosecution in the name of the state, whereas R.C. 4513.35 is limited to fines collected for violations of R.C. 4511.01-.78, R.C. 4511.99, and R.C. 4513.01-.37. In addition, the general provisions of R.C. 3375.50 were enacted prior to the special provisions of R.C. 4513.35. *See* 1941 Ohio Laws 766, 803 (Am. Sub. S.B. 29, passed May 12, 1941) (enacting G.C. 6307-108 (now R.C. 4513.35)); 1910 Ohio Laws 295 (S.B. 85, passed May 10, 1910) (enacting G.C. 3056 (now R.C. 3375.50)).

Based on the foregoing, the special provisions of R.C. 4513.35 create an exception to the general provisions of R.C. 3375.50 with respect to the disbursement of fines collected for violations of R.C. 4511.01-.78, R.C. 4511.99, and R.C. 4513.01-.37. Therefore, pursuant to R.C. 4513.35, fines collected under prosecutions commenced for violations of R.C. 4511.19 are excepted from the disbursement provisions of R.C. 3375.50.[7]

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[7] Pursuant to R.C. 4511.99(A), a portion of a fine for a violation of R.C. 4511.19(A) may be disbursed to the enforcement and education fund established by the legislative authority of the law

Again, moneys not disbursed to a law library association under R.C. 3375.50 are not included within the total amount payable when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). Therefore, fines collected by a municipal court for violations of R.C. 4511.19 are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

In conclusion, it is my opinion, and you are hereby advised that:

1.The term "penalties," as used in R.C. 3375.50, does not include court costs.

2.Fines collected by, and moneys arising from forfeited bail in, a municipal court for offenses brought for prosecution in the name of the state are included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D). However, fines collected by, and moneys arising from forfeited bail in, a municipal court that are excepted from the disbursement provisions of R.C. 3375.50 by another provision of state law are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

3.Court costs collected by a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state are not included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

4.Fines collected by a municipal court for violations of R.C. Chapter 2925 are excluded from the total amount payable under R.C. 3375.50 when determining the

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enforcement agency in this state that primarily was responsible for the arrest of the offender, the municipal indigent drivers alcohol treatment fund, or the political subdivision responsible for housing an offender during his term of incarceration. Any balance of a fine imposed for a violation of R.C. 4511.19(A) that is not disbursed as indicated above, or for a violation of R.C. 4511.19(B) is disbursed as otherwise provided by law. R.C. 4511.99(A), (B); *see* R.C. 4513.35 (providing for the distribution of fines collected for violations of R.C. 4511.19). The amount disbursed to the enforcement and education fund established by the legislative authority of the law enforcement agency in this state that primarily was responsible for the arrest of the offender, the municipal indigent drivers alcohol treatment fund, or the political subdivision responsible for housing an offender during his term of incarceration is contingent upon the number of times the offender has been convicted of a violation of R.C. 4511.19.

maximum amount to be paid to a law library association under R.C. 3375.50(D).

5.Fines collected by a municipal court for violations of R.C. 4511.19 are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

December 29, 1997

The Honorable Gregory A. White
Lorain County Prosecuting Attorney
226 Middle Avenue, 4th Floor
Elyria, Ohio 44035

SYLLABUS: 97-058

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3.Court costs collected by a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state are not included within the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

4.Fines collected by a municipal court for violations of R.C. Chapter 2925 are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).

5.Fines collected by a municipal court for violations of R.C. 4511.19 are excluded from the total amount payable under R.C. 3375.50 when determining the maximum amount to be paid to a law library association under R.C. 3375.50(D).