

OPINION NO. 69-076**Syllabus:**

1. Section 5705.41, Revised Code, requires that before any contract involving the expenditure of money is entered into by a county, the county auditor must certify that the amount required to meet the same has been lawfully appropriated for that purpose and is in the treasury or is in the process of

collection to the credit of the appropriate fund free from any previous encumbrances.

2. Section 319.19, Revised Code, prohibits the county auditor from making payments on contracts until five days after the Board of County Commissioners has approved such payments.

To: Thomas C. Hanes, Darke County Pros. Atty., Greenville, Ohio
By: Paul W. Brown, Attorney General, July 2, 1969

I have before me your request for my opinion on the correct procedure for the approval of contracts involving an expenditure of money by a county and for the subsequent payment of money in connection with such contracts.

Section 5705.41, Revised Code, is concerned with certain restrictions upon the appropriation and expenditure of money. It reads, in pertinent part, as follows:

"No subdivision or taxing unit shall:

"* * * * *

"(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon.

"* * * * *"
(Emphasis added)

Section 5705.01 (A), Revised Code, defines "subdivision" and Section 5705.01 (D), supra, defines "fiscal officer" as follows:

"As used in sections 5705.01 to 5705.47, inclusive, of the Revised Code:

"(A) 'Subdivision' means any county, municipal corporation, township, township fire district, township waste disposal district, or school district, except the county school district.

"* * * * *"

"(D) 'Fiscal officer' in the case of a county, means the county auditor.

"* * * * *"

Thus, Section 5705.41, supra, requires that before any contract involving the expenditure of money is entered into by a county, the county auditor must certify that the amount required to meet the same has been lawfully appropriated for that purpose and is in the treasury or is in the process of collection to the credit of the appropriate fund free from any previous encumbrances.

Payments of money in connection with such contract are to be made from the appropriate funds in the county treasury. These funds are controlled by the "taxing authority" of the county. Section 5705.01 (C), Revised Code, states the following:

"* * * * *"

"(C) 'Taxing authority' * * * means, in the case of any county, the board of county commissioners.

"* * * * *"

Thus the Board of County Commissioners controls the funds in the county treasury.

Section 319.19, Revised Code, reads as follows:

"A bill or voucher for payment of money from any fund controlled by the board of county commissioners must be filed with the county auditor and entered in a book for that purpose at least five days before its approval by the board. When approved, the date of approval shall be entered on such book opposite the claim, and payment of such claim shall not be made until after the expiration of five days after the approval has been so entered."

This section requires the county auditor not to make payments until five days after the Board of County Commissioners has approved such payment.

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

1. Section 5705.41, Revised Code, requires that before any contract involving the expenditure of money is entered into by a county, the county auditor must certify that the amount required to meet the same has been lawfully appropriated for that purpose and is in the treasury or is in the process of collection to the credit of the appropriate fund free from any previous encumbrances.

2. Section 319.19, Revised Code, prohibits the county auditor from making payments on contracts until five days after the Board of County Commissioners has approved such payments.