

June 30, 2022

The Honorable Timothy Young,  
State Public Defender  
Office of the Ohio Public Defender  
250 E. Broad Street, Suite 1400  
Columbus, Ohio 43215

SYLLABUS:

2022-010

- (1) R.C. 120.521(A) empowers the Ohio Access to Justice Foundation to use money allocated to the Access to Justice Foundation Fund for the charitable purposes of: (i) enhancing or improving the delivery of civil legal services to indigents; (ii) operating the Access to Justice Foundation; and (iii) providing financial assistance to eligible legal-aid societies. The source of the money does not matter.
- (2) The Ohio Access to Justice Foundation has the discretion to disburse funds from the Access to Justice Foundation Fund for the purposes of enhancing or improving the delivery of civil legal services to indigents, even if such disbursement simultaneously benefits non-indigent poor or underserved Ohioans.



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OPINION NO. 2022-010

The Honorable Timothy Young,  
State Public Defender  
Office of the Ohio Public Defender  
250 E. Broad Street, Suite 1400  
Columbus, Ohio 43215

Dear Public Defender Young:

You have requested an opinion regarding the charitable use by the Ohio Access to Justice Foundation (Foundation) of money in the Access to Justice Foundation Fund (Foundation Fund). I have framed your questions as follows:

- (1) Is the Foundation authorized to use funds held in the Foundation Fund—regardless of their origins and including those funds allocated to the Foundation Fund pursuant to R.C. 120.53(D)(1)(a) & (c)—for the charitable purposes of enhancing or improving the delivery of civil legal services to indigents, operating the Foundation, and providing financial assistance to eligible legal-aid societies?
- (2) Does the Foundation have discretion to determine whether a disbursement from the

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Foundation Fund will enhance or improve the delivery of civil legal services to indigents, even though the assistance provided by the disbursement may simultaneously benefit non-indigent poor and other underserved Ohioans?

For the reasons that follow, I answer both questions in the affirmative.

## I

The Foundation is a charitable, tax-exempt organization created by the State Public Defender. The Foundation administers funds from the legal-aid fund and the Foundation Fund pursuant to statutory directives. R.C. 120.52; R.C. 120.521; R.C. 120.53; R.C. 120.54.

The legal-aid fund and the Foundation Fund are separate funds that obtain money in different ways. Consider first the Foundation Fund. It obtains money by soliciting and accepting “gifts, bequests, donations, and contributions for use in providing financial assistance to legal aid societies, enhancing or improving the delivery of civil legal services to indigents, and operating the foundation.” R.C. 120.521(A). But it also obtains funding from the legal-aid fund—I explain that process in greater detail below.

Now consider the legal-aid fund. The treasurer of the state credits money to that fund for the purpose of supporting legal-aid societies. Funds come from multiple sources: municipal-court filing fees; county-court filing fees; court of common pleas filing fees; interest on title

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insurance agents' or companies' interest-bearing trust accounts; and interest on attorneys' interest-bearing trust accounts (IOLTAs). R.C. 120.52; R.C. 120.54; R.C. 1901.26(C); R.C. 1907.24(C); R.C. 2303.201(C); R.C. 3953.231(C)(3)-(D)(1); R.C. 4705.09(B); R.C. 4705.10(A)(3)(a).

The Foundation Fund and the legal-aid fund also differ when it comes to the disbursement of money they hold. The Foundation Fund retains a fair degree of discretion when it comes to expenditures. R.C. 120.521(A) says that the Foundation “shall distribute or use all moneys” for “providing financial assistance to legal aid societies that provide civil legal services to indigents, enhancing or improving the delivery of civil legal services to indigents, and operating the foundation.” The statute does not delineate, however, precisely what percentage of funds must go to particular types of services or functions.

In contrast, the legal-aid fund must make its disbursements according to strict statutory-apportionment guidelines. *See* R.C. 120.52 and 120.53. Under this statutory scheme, 4.5 percent of the legal-aid fund is used for its administrative costs. Any amount left over from the administrative costs is used for the purposes outlined in the statutes governing the Foundation Fund. R.C. 120.52. The remainder of the legal-aid fund is then distributed pursuant to R.C. 120.53(D). Under that statute, 5 percent is to aid the purposes served by the Foundation Fund, or to “special purpose legal-aid societies”; in other words, legal-aid societies that “provide assistance to special population groups of their eligible clients, engage in special projects that have a

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substantial impact on their local service area or on significant segments of the state's poverty population, or provide legal training or support to other legal aid societies in the state.” R.C. 120.53(D)(1)(a). 1.75 percent of what remains goes to former legal-aid societies that no longer qualify. R.C. 120.53(D)(1)(b). 15 percent of what remains goes to the Foundation Fund for its purposes. R.C. 120.53(D)(1)(c). And what is left over, after all of the preceding deductions, goes to legal-aid societies that have applied for assistance. R.C. 120.53(D)(2).

As these disbursement guidelines show, the Foundation Fund receives its money not only from gifts, bequests, donations, and contributions in R.C. 120.521(A), but in part from the legal-aid fund as set forth in R.C. 120.52 and R.C. 120.53.

## II

You first ask whether the Foundation may use the money in the Foundation Fund, regardless of its origin, for the charitable purposes of (i) enhancing or improving the delivery of civil legal services to indigents and (ii) operating the Foundation. I conclude that the answer is “yes.”

“When the language of a statute is plain and unambiguous,” the statutory text controls. *Pelletier v. City of Campbell*, 153 Ohio St.3d 611, 2018-Ohio-2121, 109 N.E.3d 1210, ¶ 14, citing *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553, 2000-Ohio-470, 721 N.E.2d 1057). Here, the statutory text unambiguously answers your question in the affirmative.

R.C. 120.521(A) states, without limitation or qualification, that the Foundation “shall distribute or use all moneys”—which includes gifts, bequests, donations, and contributions, as well as money distributed to the Foundation Fund from the legal-aid fund, R.C. 120.52 and R.C. 120.53—for “providing financial assistance to legal aid societies that provide civil legal services to indigents, enhancing or improving the delivery of civil legal services to indigents, and operating the foundation.” The use of the phrase “all moneys” indicates that the funds in the Foundation Fund are to be treated the same. In other words, the Foundation Fund’s money may be disbursed for the same purposes *regardless* of whether it is acquired by gifts, bequests, donations, and contributions, or from the legal-aid fund. And that means the funds can be put to any of the three purposes enumerated in R.C. 120.521(A).

A plain reading of R.C. 120.52, R.C. 120.521, and R.C. 120.53, establishes that the Foundation is authorized to distribute or use “all moneys” in the Foundation Fund for any or all of the three listed purposes irrespective of the funding’s provenance.

### III

Your second question asks about the discretion that the Foundation has to use the Foundation Fund for “enhancing or improving the delivery of civil legal services to indigents” when such services may also benefit poor or underserved Ohioans who do not qualify as indigent. R.C. 120.521(A); *see also* R.C. 120.51(B) (“Indigent” is a specific term referring to “a person or persons whose income is not greater than one hundred twenty-

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five percent of the current poverty threshold established by the United States office of management and budget”).

The Foundation is a creature of statute. The Revised Code gives it express statutory authority to “actively solicit and accept gifts, bequests, donations, and contributions” for the Foundation Fund. R.C. 120.521(A). And Ohio law also states that the Foundation “shall distribute or use all moneys in the access to justice foundation fund for the charitable public purpose of providing financial assistance to legal aid societies that provide civil legal services to indigents, enhancing or improving the delivery of civil legal services to indigents, and operating the foundation.” *Id.* As is true of other governmental entities established and guided by statute, the Foundation has “only such powers as are expressly granted to [it] by the authority creating [it], together with such other powers as may properly be said to be included within the express powers granted for the purpose of properly effectuating the end to be accomplished in the exercise of the express power.” 1928 Op. Att’y Gen. No. 2955, vol. IV, p. 2736 at 2737; *see also* 2002 Op. Att’y Gen. No. 2002-031, at 2-207, citing 1983 Op. Att’y Gen. No. 83-069, at 2-286. Those powers include the implicit authority to takes steps “*reasonably necessary* to make the express power effective.” 1997 Op. Att’y Gen. No. 97-051, at 2-318, citing *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917) (emphasis added).

Because R.C. 120.521(A) is silent on the method by which the purposes of the Foundation Fund are to be achieved, “it necessarily follows that [the entity]

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required to perform this duty has the implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded.” *State ex rel. Hunt v. Hildebrant*, 93 Ohio St.1, 11-12, 112 N.E. 138 (1915); *see also* 1982 Op. Att’y Gen. No. 82-018, at 2-59; 1997 Op. Att’y Gen. No. 97-051, at 2-319. Thus, the Foundation has the latitude to use the Foundation Funds “in such manner as it deems appropriate, provided that the disposal benefits the purposes” of the entity. 1985 Op. Att’y Gen. No. 85-031, at 2-112. (Though a particular power is not expressly given via statute, “such authority may reasonably be implied from the authority expressly granted”) *Id.*

There is nothing in the language of the statute that limits the programs of the Foundation to benefitting *only* the indigent and bypassing others in need, and it would be improper to interject that language into the statute. *Wayt v. DHSC, L.L.C.*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, at ¶ 34 (“[I]t is the duty of this court to give effect to the words used [in a statute], not to delete words used or to insert words not used”); *see also Pryor v. Dir., Ohio Dept. of Job & Family Servs.*, 148 Ohio St.3d 1, 2016-Ohio-2907, 68 N.E.3d 729, ¶ 14 (“The word “only” means just that”).

Compare this to R.C. 120.54, discussing the use of financial assistance from the legal-aid fund, which states that legal-aid societies “shall use the financial assistance for *only* the following purposes.” R.C. 120.54 (emphasis added). If a provision of “civil legal services to indigents” in R.C. 120.521(A) were to be exclusively available for the indigent population, the legislature



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would have drafted it to reflect that desire. *State ex rel. Rocco v. Cuyahoga Cty. Bd. of Elections*, 151 Ohio St.3d 306, 2017-Ohio-4466, 88 N.E.3d 924, ¶¶ 14-16; *Lake Shore Elec. Ry. Co. v. Pub. Util. Comm.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926); *see also* Am.Sub.H.B. No. 152, 145 Ohio Laws, Part II, 3341, 3374-3379 (removing the word “sole” from R.C. 120.52).

In sum, the Revised Code empowers the Foundation to provide benefits to the indigent population, but leaves the Foundation with discretion regarding how best to do so. That discretion enables the Foundation to support indigent Ohioans even in ways that might also benefit non-indigent Ohioans.

#### Conclusion

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

- (1) R.C. 120.521(A) empowers the Ohio Access to Justice Foundation to use money allocated to the Access to Justice Foundation Fund for the charitable purposes of: (i) enhancing or improving the delivery of civil legal services to indigents; (ii) operating the Access to Justice Foundation; and (iii) providing financial assistance to eligible legal-aid societies. The source of the money does not matter.

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- (2) The Ohio Access to Justice Foundation has the discretion to disburse funds from the Access to Justice Foundation Fund for the purposes of enhancing or improving the delivery of civil legal services to indigents, even if such disbursement simultaneously benefits non-indigent poor or underserved Ohioans.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST  
Ohio Attorney General