

OPINION NO. 79-062**Syllabus:**

1. The county auditor may not implement an automatic deposit or transfer system for payment of claims against the county where such system contemplates the elimination of the necessity for issuance of warrants upon the county treasurer.
2. The county auditor or treasurer may not deposit county-collected tax revenues into designated bank accounts of local taxing subdivisions upon issuance of a warrant since such subdivisions are not "persons" for the purposes of R.C. 9.35(D).

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William J. Brown, Attorney General, September 27, 1979

I have before me your request for my opinion in which you ask the following question:

May a county auditor implement a system whereby claims against the county are paid from the treasury by means of an automatic or electronic funds transfer?

According to the information you have provided me, the system as conceived would use a local bank, designated by the claimant, as an agent for the purposes of receiving payment of the claim from the county. It is envisioned that all the various entities and individuals which may be claimants will be able to designate an agent for receipt of payment including, but not limited to, the following:

1. County employees for wages and authorized expense reimbursements;
2. Outside vendors, for materials and services purchased by the county;
3. Governmental units and agencies for distribution of county collected tax revenues, e.g., local government fund, state foundation for school districts, advance tax payments, and final tax settlements.

I have been further informed that it is envisioned that the claims of county employees, vendors, and the like, would be paid automatically into the designated accounts, eliminating the necessity for the issuance of warrants by the county auditor. Computer services would keep a record of the name of the claimant and the account into which the money has been deposited, and the claimant would receive a statement informing him or her of the date of deposit, amount, and other pertinent information. With respect to distribution of county-collected tax revenues, warrants would be retained, and the warrant, or a check, would be deposited in the appropriate bank accounts by the county on behalf of the various taxing entities. You inquire whether, in view of R.C. 319.16, R.C. 321.15, and R.C. 321.16, such a system may be implemented.

R.C. 321.15 states that no money "shall be paid from the county treasury, or transferred to any person for disbursement, except on the warrant of the county auditor." This section has been held to require the voucher or warrant of the auditor before the treasurer can legally pay out any money. State ex rel. Bartlett v. Buckeye State Bldg. & Loan Co., 67 Ohio App. 334, 348 (Franklin County 1940) (construing analogous G.C. 2674). Furthermore, one of my predecessors noted that R.C. 321.15—together with R.C. 321.16, which provides that a warrant drawn by the auditor and endorsed by the payee shall be redeemed by the treasurer in cash or by check—makes it evident that "there must be a warrant of the county auditor before there can be any payment by the county treasurer. . . ." 1933 Op. Att'y Gen. No. 1045, p. 1073, 1075.

The Code is replete with provisions that require the issuance of a warrant for payment of claim upon the county treasury. Payment of compensation to county employees, for example, is to be made biweekly upon the warrant of the auditor. R.C. 325.17. R.C. 319.16 mandates that the auditor issue warrants for all moneys payable from the county treasury and keep records of the same. With regard to funds raised by taxes, R.C. 5705.41(C) provides that no subdivision shall make an expenditure "except by a proper warrant drawn against an appropriate fund. . . ." In view of such clear statutory expressions of an intent that no moneys be disbursed except upon the issuance of a warrant, I must conclude that an automatic deposit or transfer system which contemplates the elimination of warrants cannot be implemented by the county auditor.

Where warrants are retained, payment of claims against a county by way of deposit in the claimant's bank account may be made in accordance with R.C. 9.35(D). That section provides:

A public official, at the request of a person to whom the political subdivision, board, commission, bureau, or other public body is

indebted and to whom payment is to be made, may send a check to a bank representing the amount due such person for credit to his or her account in the bank. . . .

The county treasurer and county auditor are public officials authorized to exercise the powers granted in R.C. 9.35. See 1970 Op. Att'y Gen. No. 70-091. Thus, R.C. 9.35(D) empowers these officials to deposit county-collected tax revenues into the accounts of the various taxing subdivisions if the latter are "persons," as that word is used in the statute.

" 'Person,' " unless another definition is supplied by statute, "includes an individual, corporation, business trust, estate, trust, partnership, and association." R.C. 1.59(C). This definition does not purport to be all-inclusive, and therefore does not, in and of itself, exclude governmental bodies. However, it may be generally said that, unless expressly provided, the term "person," when used in a statute, does not encompass public entities such as the state, counties, or municipal corporations, or officers thereof. See, e.g., *In re McLaughlin*, 16 Ohio Op. 2d 191 (P. Ct. Noble County 1960), *aff'd*, 17 Ohio Op. 2d 498 (Ct. App. Noble County 1961); 1979 Op. Att'y Gen. No. 79-055; 1978 Op. Att'y Gen. No. 78-030; 1962 Op. Att'y Gen. No. 3168, p. 591; 1962 Op. Att'y Gen. No. 2781, p. 70; 1958 Op. Att'y Gen. No. 1647, p. 51.

A few cases have indicated that where the purpose, language, or context of a statute demonstrates that a broad interpretation of the word "person" is intended, a public body will come within the purview of the statute. E.g., *Springfield v. Walker*, 42 Ohio St. 543 (1885); *City of Dayton v. McPherson*, 57 Ohio Op. 2d 361 (C.P. Montgomery County 1969). There is nothing in the language of R.C. 9.35(D), however, from which an implication arises that it was the legislative intent to include governmental entities within the act. Accordingly, it is my conclusion that "person," as that word is employed in R.C. 9.35(D), does not include the various taxing entities to which the county makes distribution of county-collected tax revenues.

Therefore, it is my opinion, and you are advised, that:

1. The county auditor may not implement an automatic deposit or transfer system for payment of claims against the county where such system contemplates the elimination of the necessity for issuance of warrants upon the county treasurer.
2. The county auditor or treasurer may not deposit county-collected tax revenues into designated bank accounts of local taxing subdivisions upon issuance of a warrant since such subdivisions are not "persons" for the purposes of R.C. 9.35(D).