# OPINION NO. 2013-032

**Syllabus:**

2013-032

1. Expenses specified in R.C. 2501.18 that are incurred in providing and maintaining office facilities for judges of a court of appeals that has not selected a principal seat shall be shared proportionately by the counties comprising the district in accordance with R.C. 2501.181(D).
2. R.C. 153.36, alone, does not affect the payment of the expenses incurred for the repairs and renovations made to office space in a county courthouse that is used by a court of appeals judge. The expenses shall be allocated in accordance with R.C. 2501.181(D).
3. A court of appeals has the authority to determine whether a repair or renovation of office space used by a court of appeals judge is appropriate; however, that determination must be made reasonably and the repair or renovation must be necessary and essential to the efficient operation of the court.

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**To: Mark E. Kuhn, Scioto County Prosecuting Attorney, Portsmouth, Ohio**
**By: Michael DeWine, Ohio Attorney General, October 9, 2013**

You have requested an opinion regarding the proper allocation and payment of costs incurred in providing and maintaining office facilities for two judges of the Fourth District Court of Appeals. You explain that the Fourth District Court of Appeals consists of fourteen counties, one of which is Scioto County. You further explain that the Fourth District Court of Appeals has not selected a principal seat under R.C. 2501.181. Each judge of the Fourth District Court of Appeals has selected a county within the Fourth District in which to locate his or her individual office. Two of the judges chose to establish offices in Scioto County in the Scioto County Courthouse.

Because of the condition of the available office space in the Scioto County Courthouse, various expenses have been or will be incurred in order to accommodate the two judges. To provide an office for one judge (''Judge A''), extensive renovations to existing office space on the third floor of the courthouse were made, including the removal of walls, replacement of carpeting, and the construction of bathrooms and a kitchenette area. With respect to the other judge (''Judge B''), while the roof of the courthouse was being repaired, the office sustained significant water damage to the ceiling, walls, carpets, equipment, and furniture. Scioto County has been leasing office space for Judge B in the courthouse annex until the repairs to his permanent office are completed.

You ask us the following questions regarding the allocation of the expenses incurred for the repairs and renovations set forth above:

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1. Are the repair and renovation expenses a liability of all fourteen counties of the Fourth District, to be divided proportionately among the counties of the district, or solely an expense to be borne by Scioto County?

2. What effect does R.C. 153.36, which governs the approval of plans for the building, addition to, alteration, repair, or improvement of a courthouse, have on the payment of the expenses incurred for the repairs and renovations of the judges' offices?

3. If the expenses are to be shared proportionately among all fourteen counties, what entity has the authority to determine which expenses are appropriate?

**Courts of Appeals Generally**

We begin with a brief discussion of the constitutional and statutory provisions governing the courts of appeals in Ohio. "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Ohio Const. art. IV, § 1. Ohio Const. art. IV, § 3(A) declares "[t]he state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals."

There are twelve court of appeals districts in Ohio. R.C. 2501.01. The Fourth District Court of Appeals consists of four judges, any three of whom "comprise the court of appeals in the hearing and disposition of cases." R.C. 2501.013(D). The Fourth District Court of Appeals encompasses the following counties: "Adams, Highland, Pickaway, Ross, Pike, Scioto, Lawrence, Gallia, Jackson, Meigs, Vinton, Hocking, Athens, and Washington." R.C. 2501.01(D). A court of appeals must hold sessions in each of the counties in the district as necessary. Ohio Const. art. IV, § 3(A); R.C. 2501.04. Each cause shall be heard in the county in which it arose, unless for good cause, the court of appeals determines the cause may be heard in another county of the district. R.C. 2501.05. A cause may be decided, however, in any county in the district. *Id.*

**Duties of a Board of County Commissioners Regarding a Court of Appeals**

A board of county commissioners has several duties with respect to the courts that serve the county. Among those duties is the provision of a courthouse. R.C. 307.01(A) (a board of county commissioners is required to provide a courthouse when one is determined by the board to be needed). A board of county commissioners is also authorized to "construct, enlarge, improve, rebuild, equip, and furnish a courthouse." R.C. 307.02 ("[t]he board of county commissioners of any county . . . *may* purchase, . . . , construct, enlarge, improve, rebuild, equip, and furnish a courthouse") (emphasis added); 2001 Op. Att'y Gen. No. 2001-006, at 2-40 ("[b]ecause a board of county commissioners is required by R.C. 307.01(A) to manage and control the courthouse, the board is required to keep the courthouse safe and in good repair").

With respect to the courts of appeals, the board of county commissioners in each county in a court of appeals district must provide a "proper and convenient" place for the court of appeals to hold court. Ohio Const. art. IV, § 3(A). More specifically, a board of county commissioners must "provide a room for holding court and a consultation room for the judges, cause such rooms to be properly furnished, heated, ventilated, lighted, and kept clean and in good order, and provide such other conveniences as the court deems necessary." R.C. 2501.18.

The manner in which the separate boards of county commissioners in a court of appeals district provide supplies and facilities for a court of appeals, as well as the manner in which the expenses for a court of appeals are shared by the counties in a district, are set forth in R.C. 2501.181. R.C. 2501.181(A) authorizes a court of appeals to select one of the counties in the court's district to be the court's principal seat. If a principal seat is selected, the board of county commissioners of the county selected as the principal seat "shall provide and maintain the books, supplies, and facilities required to be provided under [R.C. 2501.18]." R.C. 2501.181(B). Additionally, "[t]he expenses of operating the court, including the cost of providing and maintaining books, supplies, and facilities, and including the compensation of one or more constables appointed pursuant to [R.C. 2701.07], shall be borne by all counties in the district." *Id.* Each county in the district shall pay a share of the expenses proportionate to the population of the county as compared to the district's total population. *Id.* The county auditor of the county selected as the principal seat "shall, annually, calculate the share of the court's expenses owed by each of the other counties in the district, and shall issue his warrant for the proper amount to the treasurer of each such county." *Id.* In turn, the treasurer of each county in the district is required to pay the amount of the warrant into the county treasury of the county selected as the principal seat. *Id.* If a principal seat is selected, the other counties in the district are not obligated to provide separate books, supplies, and facilities required by R.C. 2501.18. R.C. 2501.181(C). Rather, when the court of appeals "in the interests of justice temporarily conducts business in the county other than the county constituting its principal seat, such other county shall provide the court with such facilities as it needs at the time for the proper conduct of its business." *Id.*

If a court of appeals has not selected a principal seat, "the expenses of operating the court specified in [R.C. 2501.18] shall be borne by all counties in the district" and shared proportionately to each county's population as compared to the total population of the district. R.C. 2501.181(D). R.C. 2501.181(D) provides the following procedure for the allocation and payment of the expenses for a court of appeals that has not selected a principal seat:

> [t]he auditor of each county shall annually submit a statement of expenses incurred pursuant to [R.C. 2501.18], or a statement that no such expenses were incurred, to the auditor of the most populous county in the district, who shall calculate, based on the total expenses incurred by the district, the proportionate share owed by each county in the district. For each county whose proportionate share of

> district expenses exceeds the expenses that county incurred, the auditor of the most populous county shall then issue an order for payment by the county of an amount equal to the difference between that county's proportionate share and the expenses that county incurred. The payments so ordered shall be paid to the credit of a special fund created for the purpose of this division in the treasury of the most populous county. From that fund, the auditor of the most populous county shall draw a warrant, payable to each county in the district that incurred expenses in excess of the county's proportionate share of the district expenses, in the amount by which those expenses exceed that proportionate share.

**Allocation of Repair and Renovation Expenses for the Fourth District Court of Appeals**

We now turn to the allocation of the repair and renovation expenses specified in your opinion request. Since a principal seat has not been selected, R.C. 2501.181(D) applies to the provision of supplies and facilities for the Fourth District Court of Appeals.[1] Pursuant to R.C. 2501.181(D), "expenses of operating the court specified in [R.C. 2501.18]" are shared proportionately by all of the counties in the district. Accordingly, whether the repair and renovation expenses incurred for Judge A's and Judge B's offices are shared by the counties of the Fourth District or are an expense of solely Scioto County depends on whether the repair and renovation expenses are "expenses of operating the court specified in [R.C. 2501.18]." Thus, we must determine what is meant by the phrase "expenses of operating the court specified in [R.C. 2501.18]."

There are two possible interpretations of the phrase "expenses of operating the court specified in [R.C. 2501.18]." First, the phrase may be read broadly to include any expenses specified in R.C. 2501.18 that are incurred for the benefit of a court of appeals. Under this interpretation, so long as the repair and renovation expenses for Judge A's and Judge B's offices are properly includable as expenses of operating the court under R.C. 2501.18, they shall be shared proportionately by

[1] A well-established rule of statutory construction is that when two statutory provisions conflict, the special provision prevails over the more general provision. R.C. 1.51. R.C. 307.02 authorizes a board of county commissioners to improve, equip, and furnish a courthouse. This provision addresses modifications to a courthouse generally. R.C. 2501.18 and R.C. 2501.181, on the other hand, address the accommodations a board of county commissioners must make specifically for the benefit of a court of appeals, and how the expenses for those accommodations are shared by the counties comprising a court of appeals district. Since we are considering repair and renovation expenses incurred for offices for court of appeals judges, R.C. 307.02 is the more general provision that must yield to the more specific provisions of R.C. 2501.18 and R.C. 2501.181. Accordingly, allocation of the repair and renovation expenses referred to in your opinion request letter will be determined by assessing whether they are includable as "expenses of operating the court specified in [R.C. 2501.18]."

each of the counties of the Fourth District. Alternatively, the phrase ''expenses of operating the court specified in [R.C. 2501.18]'' may be read narrowly to include only daily operating expenses and not expenses incurred in effecting permanent improvements.[2] If this interpretation is adopted, then only the repair and renovation expenses that are considered ''operating expenses'' are to be shared by the counties in the district. Expenses that are not operating expenses (*e.g.*, expenses for permanent improvements) would be paid solely by Scioto County pursuant to the board of county commissioners' authority to construct, improve, furnish, and equip a courthouse under R.C. 307.01 and R.C. 307.02. For the following reasons, we find a broad reading of the phrase ''expenses of operating the court specified in [R.C. 2501.18]'' to be more reasonable.

The expenses specified in R.C. 2501.18 are those incurred as a result of providing a room for holding court and a consultation room for the judges, causing those rooms to be ''properly furnished, heated, ventilated, lighted, and kept clean and in good order,'' and providing ''such other conveniences as the court deems necessary.'' R.C. 2501.18. The expenses are wide-ranging and encompass both operating expenses and permanent improvements. As an illustration, let us examine the term ''ventilate,'' which is defined as:

> **3 a :** to expose to air and esp. to a current of fresh air for purifying, curing, or refreshing . . . **4 a :** *of a current of air*: to pass or circulate through so as to freshen **b :** to cause fresh air to circulate through (as a room or mine).

*Merriam-Webster's Collegiate Dictionary* 1388 (11th ed. 2005). With this definition in mind, it is evident that the term ''ventilate'' in R.C. 2501.18 may include not only the daily operating expense of the cost of electricity for the air conditioning provided in the room, but also the permanent improvement expense of adding a window or installing ducts for a heating, ventilating, and air conditioning system. Similarly, the phrase ''such other conveniences as the court deems necessary'' may include not only the operating expenses incurred for the purchase of computers for the judges' use, but also expenses related to permanent improvements including the erection of walls to separate office spaces from other communal spaces, or the installation of fixtures for kitchenettes or private bathrooms that the judges of the court deem necessary conveniences.

Instead of separately categorizing the expenses in the statute as operating expenses and permanent improvement expenses, the expenses of operating the court specified in R.C. 2501.18 (those incurred in providing rooms and causing the

[2] The terms ''operating expenses'' and ''permanent improvements'' are accounting terms and are frequently used to categorize expenses when allocating tax levy funds. *See, e.g.,* R.C. 5705.03. Generally, ''operating expenses'' are expenses that are not permanent improvements. *See* R.C. 133.01(I) (definition of ''current operating expenses''); R.C. 5705.01(F) (same as previous parenthetical). A ''permanent improvement'' is generally property, an asset, or an improvement that has an estimated useful life of five or more years. *See* R.C. 133.01(CC); R.C. 5705.01(E).

rooms to be ''properly furnished, heated, ventilated, lighted, and kept clean and in good order'' and in providing ''such other conveniences the court deems necessary'') are listed together as items required to be provided to a court of appeals. R.C. 2501.181(D) does not explicitly state that only operating expenses, to the exclusion of permanent improvements, are to be shared by the counties of the district. As noted above, the term ''operating expenses'' is a term of art that is defined in other statutory schemes that are not applicable here. *See* R.C. 133.01; R.C. 5705.01. R.C. 2501.181 uses the phrase ''expenses of operating the court,'' rather than the term ''operating expenses.'' In addition, when delineating the process for paying individual shares of the expenses, R.C. 2501.181(D) states that ''[t]he auditor of each county shall annually submit a statement of expenses incurred pursuant to [R.C. 2501.18].'' The statute again does not refer to only certain expenses listed in R.C. 2501.18, but refers to all of the expenses incurred pursuant to R.C. 2501.18. This reinforces the notion that ''the expenses of operating the court specified in [R.C. 2501.18]'' includes both operating expenses and permanent improvement expenses.

In interpreting a statute, words and phrases may not be added where they do not already exist. *Perrysburg Twp. v. City of Rossford*, 103 Ohio St. 3d 79, 2004-Ohio-4362, 814 N.E.2d 44, at ¶7 (''[i]n interpreting statutes, 'it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used'''); *State v. Elam*, 68 Ohio St. 3d 585, 587, 1994-Ohio-317, 629 N.E.2d 442 (''[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish''). If the General Assembly intended to exclude permanent improvements from the expenses to be shared by the counties in a court of appeals district, it could have included language to that effect in R.C. 2501.181(D). Since the General Assembly did not, we will not insert that language into the statute.

Furthermore, a statute must be considered in its entirety with all parts of the statute interpreted consistently. *State v. Wilson*, 77 Ohio St. 3d 334, 336, 1997-Ohio-35, 673 N.E.2d 1347 (''[i]n reviewing a statute, a court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body''); *State v. Dickerson*, 45 Ohio St. 3d 206, 209, 543 N.E.2d 1250 (1989) (''when asked to interpret a statute, a court should consider the statute in its entirety''); *Commerce & Indus. Ins. Co. v. City of Toledo*, 45 Ohio St. 3d 96, 102, 543 N.E.2d 1188 (1989) (''words and phrases in a statute must be read in context of the whole statute''). Reading R.C. 2501.181 as a whole further confirms that the phrase, ''expenses of operating the court specified in [R.C. 2501.18],'' should be read broadly. R.C. 2501.181(B) requires the board of county commissioners of the county selected as the principal seat of a court of appeals to ''*provide and maintain* the books, supplies, and *facilities* required to be provided under [R.C. 2501.18].'' (Emphasis added.) R.C. 2501.181(B) then states that ''*[t]he expenses of operating* the court, *including* the cost of *providing and maintaining* books, supplies, and *facilities* . . . shall be borne by all counties in the district.'' (Emphasis added.) It is evident that the General Assembly intended that the board of county commissioners of the principal seat

provide and maintain the books, supplies, and facilities required by R.C. 2501.18, but that the expenses of providing and maintaining those books, supplies, and facilities shall be shared by all of the counties in the district. The above-emphasized language of R.C. 2501.181(B) clearly demonstrates that "the expenses of operating the court" include those expenses incurred in the provision and maintenance of facilities. The provision and maintenance of facilities encompasses both daily operating expenses and permanent improvement expenses. Because the phrases in R.C. 2501.181 must be read in context and consistently, R.C. 2501.181(D)'s phrase "the expenses of operating the court specified in [R.C. 2501.18]" must include both operating and permanent improvement expenses just as they are both included in R.C. 2501.181(B).

R.C. 2501.16(B) provides further support for a broad reading of the phrase "expenses of operating the court specified in [R.C. 2501.18]." R.C. 2501.16(B) authorizes a court of appeals to charge an additional fee on the filing of each cause upon a determination that "for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court, *including*, but not limited to, *the acquisition* of additional facilities or *the rehabilitation* of existing facilities." (Emphasis added.) Funds that are collected pursuant to that fee are paid to the county treasurer and disbursed upon order of the court. *Id.* Acquiring and rehabilitating facilities involves making permanent improvements. R.C. 2501.16(B) thus authorizes a court of appeals to incur expenses for permanent improvements. Reading R.C. 2501.181(D)'s phrase "expenses of operating the court specified in [R.C. 2501.18]" to include both "operating expenses" and those for "permanent improvements" is consistent with this authority to acquire and rehabilitate facilities for a court of appeals. [3]

A broad reading of R.C. 2501.181(D)'s phrase "expenses of operating the court specified in [R.C. 2501.18]" also leads to a more practical result. This broader reading eliminates confusion or uncertainty whether an expense is attributable to daily court operations (as an operating expense) or to permanent improvements. This interpretation creates a clear and uniform procedure for allocating the expenses incurred for the operation of a court of appeals. Rather than determining whether an expense is an operating expense or a permanent improvement, the focus is whether the expense is an expense required by R.C. 2501.18. If the expense is one

[3] R.C. 2501.16(B) provides that the funds collected pursuant to a special projects fee be paid to the county treasurer of the county selected as the court's principal seat. The statute does not address how the funds shall be paid in a court of appeals district that has not selected a principal seat. R.C. 2501.16(B) is nevertheless instructive in the case of a court of appeals that has not selected a principal seat. Based on the plain language of the statute, the authority to charge the fee and determine whether the acquisition or rehabilitation of facilities is necessary to the efficient operation of the court applies to any court of appeals regardless of whether a principal seat has been selected. The statute clearly authorizes the acquisition and rehabilitation of facilities by a court of appeals. It is for this proposition that we consider R.C. 2501.16(B).

required by R.C. 2501.18 for a court of appeals, the expense shall be shared by all of the counties in the district. This interpretation advances the intent of the General Assembly that the expenses of the court shall be shared by all counties that benefit from the services performed by the court of appeals. Allocating the expenses this way is fundamentally fair. As long as the judges continue to locate their offices in the Scioto County Courthouse, the office space will be used exclusively by them and not by other Scioto County offices or officials. While there, the judges complete the work of the court of appeals that is for the benefit of not only Scioto County residents, but also residents of all of the counties in the Fourth District. Therefore, it is equitable that all of the counties in the district share in the expenses of that court. Distributing the expenses among the counties of a court of appeals district is consistent with the manner in which expenses of other entities that serve multiple counties or political subdivisions are shared. *See, e.g.,* R.C. 167.06(A) (expenses of a regional council of governments are paid by funds appropriated by the governing bodies of the member governments); R.C. 3709.07 (the contract for the formation of a combined general health district "shall state the proportion of the expenses of the board of health or health department of the combined district to be paid by the city or cities and by the original general health district").

It is important to note that in reaching the conclusion that R.C. 2501.181(D)'s phrase, "the expenses of operating the court specified in [R.C. 2501.18]" includes operating expenses and expenses incurred for permanent improvements, we are not concluding that the term, "operating expenses," as that term is used elsewhere in the Revised Code, includes permanent improvement expenses. Rather, we are concluding that the phrase "expenses of operating the court specified in [R.C. 2501.18]," as that phrase is used in R.C. 2501.181, includes expenses relating to the daily operation of a court of appeals as well as expenses incurred in making permanent improvements for the benefit of a court of appeals.

In summary, "the expenses of operating the court specified in [R.C. 2501.18]" include operating expenses and permanent improvement expenses incurred for the benefit of a court of appeals. Expenses specified in R.C. 2501.18 that are incurred in providing and maintaining office facilities for judges of a court of appeals that has not selected a principal seat shall be shared proportionately by the counties comprising the district in accordance with R.C. 2501.181(D).

**Effect of R.C. 153.36 on the Payment of the Expenses**

Next, we turn to your question concerning the effect of R.C. 153.36 on the payment of the expenses related to the repairs and renovations of the judges' offices. R.C. Chapter 153 establishes procedures for the construction, repair, and improvement of state and county buildings, bridges, roads, and other public improvements.[4] 2012 Op. Att'y Gen. No. 2012-029, at 2-257; 1991 Op. Att'y Gen. No. 91-012, at

[4] "Public improvements" is not defined for purposes of R.C. Chapter 153; however, prior Attorney General opinions have concluded that the term includes "'buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works and all other structures constructed by the state or a political subdivision of

2-62 n.1 (''R.C. Chapter 153 sets forth a comprehensive scheme of various procedural requirements that govern the award of contracts for the construction, reconstruction, alteration, improvement, and repair of state buildings, county buildings, and other public improvements''); 1990 Op. Att'y Gen. No. 90-051, at 2-211; 1987 Op. Att'y Gen. No. 87-079, at 2-514; 1980 Op. Att'y Gen. No. 80-051, at 2-209 (''the provisions of R.C. 153.12 are applicable to the award and payment of any contract for a public improvement project entered into by any county, township, municipal corporation or other subdivision, excepting boards of education, whether or not state funds are provided for such project''); *see, e.g.,* R.C. 153.01 (submission of accurate plans, estimates, bills of materials, and details to scale); R.C. 153.12(A) (award and execution of ''any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement made by the state, or any county, township, municipal corporation, school district, or other political subdivision, or any public board, commission, authority, instrumentality, or special purpose district of or in the state or a political subdivision or that is authorized by state law''); R.C. 153.21 (board of county commissioners may appoint a building commission when additions or improvements to a county owned building are being made); R.C. 153.28 (plans, drawings, bills of material, specifications, and cost estimates, once approved, shall be filed in the county auditor's office); R.C. 153.36 (approval of plans for courthouse or jail); R.C. 153.44 (''[b]efore work is done or material furnished, all contracts that exceed one thousand dollars in amount shall be submitted . . . to the prosecuting attorney of the county'' to ascertain compliance with R.C. 153.01-.60); R.C. 153.58 (''[n]o officers shall violate [R.C. 153.01-.57]''); R.C. 153.99 (penalty for violation of R.C. 153.58).

Some provisions of R.C. Chapter 153 apply to both state and county buildings, *see, e.g.,* R.C. 153.12; R.C. 153.19, but R.C. 153.21-.49 are applicable specifically to county buildings. *State ex rel. Schaefer v. Bd. of Cnty. Comm'rs of Montgomery Cnty.*, 11 Ohio App. 2d 132, 138, 229 N.E.2d 88 (Montgomery County 1967) (''[t]he first 20 sections of this chapter pertain to 'state buildings,' the next 29 sections pertain to 'county buildings and bridges,' and the last 10 sections pertain to 'contracts for construction'''). Broadly, the purpose of R.C. Chapter 153 is to ensure the proper allocation of state and county funds used for the orderly and planned construction, alteration, repair or improvement of state and county buildings, bridges, roads, and other public improvements. *See State ex rel. Schulman v. Pokorny*, 8th Dist. No. 35260, 1976 Ohio App. LEXIS 8148, at *5 (Dec. 23, 1976) (internal quotation marks omitted) (''R.C. Chapter 153 was promulgated to insure that public buildings would be planned and constructed in an orderly and responsible manner''); 1987 Op. Att'y Gen. No. 87-079, at 2-514 (''[a]s a general matter, the imposition of competitive bidding requirements such as those appearing in R.C. Chapter 153 is intended to further the salutary purpose of assuring the best and most efficient expenditure of public moneys by public officials who are responsible for undertaking public construction, and preventing fraud and collusion with respect thereto'').

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the state.''' 2012 Op. Att'y Gen. No. 2012-029, at 2-257 n.11 (quoting 1980 Op. Att'y Gen. No. 80-051, at 2-208 n.1).

We now turn to the specific provision of R.C. Chapter 153 with which you are concerned, R.C. 153.36. R.C. 153.36 states "the plans, drawings, representations, bills of material, and specifications of work, and estimates of the cost thereof in detail and in the aggregate, required in [R.C. 153.31-.35] [relating] to the building of a courthouse or jail, or an addition to or alteration, repair, or improvement thereof" shall be submitted to a special panel ("R.C. 153.36 panel") for approval by a majority of the panel members. The R.C. 153.36 panel consists of "the board of county commissioners, together with the clerk of the court of common pleas, the sheriff, and probate judge, and one person to be appointed by the judge of the court of common pleas." *Id.* If the R.C. 153.36 panel approves the plans relating to the construction of or addition to a courthouse, a copy of the documents must be sent to the county auditor and kept in the auditor's office. *Id.* In order to determine whether R.C. 153.36 applies to the repairs and renovations of Judge A's and Judge B's offices, we must first determine whether the statute's terms are mandatory or merely advisory. Next, we must assess whether the work in progress or already completed with respect to the judges' offices constitutes an addition to, or an alteration, repair, or improvement of a courthouse.

R.C. 153.36 states that any "plans, drawings, representations, bills of material, and specifications of work, and estimates of the cost thereof in detail and in the aggregate . . . *shall* be submitted" to the R.C. 153.36 panel for approval. (Emphasis added.) It is well established that "'[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage.'" *Dep't of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) (quoting *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one)). There is no indication that the General Assembly intended that the requirements contained in R.C. 153.36 be optional, permissive, or discretionary rather than mandatory. Instead, the repeated use of the word "shall" throughout R.C. Chapter 153 in numerous sections and use of the word "may" in others indicate that the requirements within R.C. 153.36 are mandatory. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d at 107 (citation omitted) ("[t]he word 'shall' is usually interpreted to make the provision in which it is contained mandatory, especially if frequently repeated"). The General Assembly knew how to create a permissive or discretionary statute, but chose to use the term "shall" in R.C. 153.36. Therefore, the submission of plans for the building, addition, alteration, repair or improvement of a courthouse to the R.C. 153.36 panel is mandatory.

We must next determine whether the repairs and renovations proposed and undertaken within the Scioto County Courthouse constitute an "addition to or alteration, repair, or improvement" of the courthouse so as to fall under the requirements of R.C. 153.36. In your letter, you state that the work performed on Judge A's office includes "the removal of a drop ceiling, removal of and installation of carpeting, removal of walls, construction of bathrooms and kitchenette area, installation of bathroom and kitchen fixtures, construction of raised platform areas, making and installing egg and dart molding, plastering, and painting." The repairs to

Judge B's office involve repair or replacement of "the ceiling, walls, carpets, equipment and furniture" resulting from water damage caused by the replacement of the roof of the courthouse.

The terms "addition to," "alteration," "repair," or "improvement" are not defined within R.C. Chapter 153. Accordingly, we must use the common, ordinary meaning of those words. *See generally* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). An "addition" is "[a] structure that is attached to or connected with another building that predates the structure; an extension or annex." *Black's Law Dictionary* 43 (9th ed. 2009). An "alteration" is defined as "[a] substantial change to real estate, esp[ecially] to a structure, usu[ally] not involving an addition to or removal of the exterior dimensions of a building's structural parts." *Id.* at 90. The term "repair" means "to restore by replacing a part or putting together what is torn or broken . . . to restore to a sound or healthy state." *Merriam-Webster's Collegiate Dictionary* 1055 (11th ed. 2005). Lastly, an "improvement" is defined as "[a]n addition to real property, whether permanent or not; esp[ecially] one that increases its value or utility or that enhances its appearance." *Black's Law Dictionary* 826 (9th ed. 2009).

In light of the common meanings of the terms, it is evident that the repairs and renovations of Judge A's and Judge B's offices constitute "addition[s] to or alteration[s], repair[s], or improvement[s]," as those terms are used in R.C. 153.36. *See* 1950 Op. Att'y Gen. No. 1647, p. 218, at 220-21 ("the erection of a partition and the cutting of a doorway is such an alteration to a court room as to bring [the work within the purview of R.C. 153.36] . . . . [E]rection of a partition is undoubtedly an addition"). The extensive renovations performed for Judge A's office are substantial enough to be "alterations" or "improvements" under R.C. 153.36. The repairs that the county anticipates completing for Judge B's office constitute, at a minimum, "repairs" to the courthouse to return the office space to a sound state. Therefore, it is clear that the mandatory provisions of R.C. 153.36 apply to the repairs and renovations of Judge A's and Judge B's offices.

Since we have determined that the provisions of R.C. 153.36 apply to the repairs and renovations relating to the offices for Judges A and B in the Scioto County Courthouse, we must now determine what effect the statute has on the payment of the repair and renovation expenses. As discussed above, R.C. 153.36 makes mandatory the submission of plans, drawings, work specifications, and cost estimates for the construction, or addition to, alteration, repair, or improvement of a courthouse to the R.C. 153.36 panel. The statute does not address the payment of expenses incurred for the construction, addition to, alteration, repair, or improvement of a courthouse. Therefore, R.C. 153.36, alone, does not have an effect on the payment of the repair and renovation expenses. Rather, as the repair and renovation expenses involved in your opinion request were incurred for the benefit of a court of appeals that has not selected a principal seat, payment of the expenses is determined by R.C. 2501.181(D).

No Ohio case law has addressed the effect that failing to follow the require-

ments of R.C. 153.36 has on the payment of repair or renovation expenses. However, courts have reached various conclusions when considering the validity or enforceability of public improvement contracts made in violation of statutory requirements. Courts have concluded that contracts made in violation of mandatory statutory provisions are void. *See, e.g., CommuniCare, Inc. v. Wood Cnty Bd. of Comm'rs*, 161 Ohio App. 3d 84, 2005-Ohio-2348, 829 N.E.2d 706, at ¶ 38 (''[c]ontracts made in violation of state statute or in disregard of such statutes are void, not merely voidable''); *State ex rel. Schaefer v. Bd. of Conty. Comm'rs of Montgomery Cnty.*, 11 Ohio App. 2d at 138 (''[t]he requirements for competitive bidding on contracts for the erection of county buildings by private contract [pursuant to R.C. 153.31 *et seq.*] are mandatory, and a contract made without compliance with such sections is void''). Courts will not enforce the terms of a void contract. *CommuniCare, Inc. v. Wood Cnty Bd. of Comm'rs*, at ¶38 (''courts will not lend their aid to enforce such contracts directly or indirectly but will leave the parties where they have placed themselves''). *But see Meccon v. Univ. of Akron*, 126 Ohio St. 3d 231, 2010-Ohio-3297, 933 N.E.2d 231, at ¶13 (''when a rejected bidder establishes that a public authority violated state competitive-bidding laws in awarding a public-improvement contract, that bidder may recover reasonable bid-preparation costs as damages if that bidder promptly sought, but was denied, injunctive relief and it is later determined that the bidder was wrongfully rejected and injunctive relief is no longer available''); *Cementech, Inc. v. City of Fairlawn*, 109 Ohio St. 3d 475, 2006-Ohio-2991, 849 N.E.2d 24, at ¶14 (''when a municipality violates competitive-bidding laws in awarding a competitively bid project, the rejected bidder cannot recover its lost profits as damages''); *Mech. Contractors Ass'n of Cincinnati v. Univ. of Cincinnati*, 152 Ohio App. 3d 466, 2003-Ohio-1837, 788 N.E.2d 670, at ¶24 (''[c]ourts that have awarded monetary relief to disappointed bidders often do so because injunctive relief is no longer available as an effective form of relief, as where work on the contract has already started or is complete by the time the court decides the case'').

With respect to projects that have been completed prior to the initiation or resolution of litigation to enforce statutes governing public improvement contracts, the courts will not undo the project to require compliance after the fact. *U.S. Corrections Corp. v. Ohio Dep't of Indus. Relations*, 73 Ohio St. 3d 210, 221, 652 N.E.2d 766 (1995) (''appellees were obligated to follow the requirements of the competitive bidding laws for the work performed on the Kruse renovation project. However, we have no means of requiring competitive bidding on a project that has long since been completed''). The contracting parties bear the responsibility of determining what statutory limitations are placed on a political subdivision's authority to contract for a public improvement project. *Ohio Asphalt Paving v. Ohio Dep't of Indus. Relations*, 63 Ohio St. 3d 512, 516-17, 589 N.E.2d 35 (1992) (''[contractors] are dealing with public agencies whose powers are defined by law, and whose acts are public transactions, and they should be charged with knowledge of both''). If a contractor fails to undertake such a determination, he contracts at his own risk. *CommuniCare, Inc. v. Wood Cnty Bd. of Comm'rs*, at ¶38 (''[a] contractor must ascertain whether the contract complies with the state constitution, statutes, charters and ordinances, so far as they are applicable, and a contractor who fails to do so performs the contract at his or her peril'').

"[I]t is beyond the opinion-rendering function of the Attorney General 'to resolve questions of fact regarding the lawfulness of actions taken in the past or the rights or liabilities of particular individuals or governmental entities.'" 2013 Op. Att'y Gen. No. 2013-025, slip op. at 9 (quoting 2013 Op. Att'y Gen. No. 2013-010, at 2-90). These issues must be addressed by the local officials of the counties comprising the Fourth District Court of Appeals or the judiciary. 2013 Op. Att'y Gen. No. 2013-025, slip op. at 9; *see generally* 2009 Op. Att'y Gen. No. 2009-033, at 2-229 ("the Attorney General cannot definitively predict the approach that the courts may take in deciding whether or not to impose personal liability in any particular case, as that is a matter solely for the judiciary"); 2005 Op. Att'y Gen. No. 2005-002, at 2-12 ("[w]e are not able, by means of this opinion, to make findings of fact or to determine the rights of particular parties"); 2003 Op. Att'y Gen. No. 2003-037, at 2-311 ("[q]uestions of liability are decided by the courts, in particular contexts and with consideration of specific facts"); 2000 Op. Att'y Gen. No. 2000-021, at 2-136 ("[q]uestions of liability are resolved by the courts and cannot be determined by means of an opinion of the Attorney General"). Therefore, whether the law requires a county to pay any expenses incurred in the repair or renovation of offices in a county courthouse for a court of appeals in the event a county fails to follow the requirements of R.C. Chapter 153 cannot be determined by way of an Attorney General opinion.

**Authority to Determine Propriety of Repair and Renovation Expenses**

Your final inquiry asks, if the expenses are to be shared by all of the counties of the Fourth District, which entity has the authority to determine whether the repair and renovation expenses are appropriate? We begin by looking at the language of R.C. 2501.18, which states that "[t]he board of county commissioners must provide a room for holding court and a consultation room for the judges, cause such rooms to be properly furnished, heated, ventilated, lighted, and kept clean and in good order, and provide such other conveniences *as the court deems necessary.*" (Emphasis added.) In addition, a court of appeals is authorized to enforce a board of county commissioners' performance of the duties required by the statute. *Id.* ("[t]he performance of the duties required of the clerk and the board by [R.C. 2501.18] may be enforced by [the courts of appeals]"). The language in R.C. 2501.18, thus, appears to grant the court of appeals authority to determine whether repair and renovation expenses are appropriate and necessary.[5]

At the same time, however, plans for an addition to, alteration, or improve-

[5] We understand that the term "the court," as used in R.C. 2501.18, refers to the court of appeals as a whole and not to a single judge of the court of appeals. As a non-judicial, but significant administrative function of a multi-judge court, the determination of what conveniences are necessary for the operation of the court of appeals requires action by more than just one judge of the court to exercise the authority of the court. *See* 2000 Op. Att'y Gen. No. 2000-041, at 2-251 (footnotes and citations omitted) ("[t]here are other functions of a court, however, variously characterized as 'administrative,' 'temporary and emergent,' or 'neither judicial nor quasi-judicial,' that a single judge of a multi-judge court of common pleas, acting

ment of a courthouse must be approved by "the board of county commissioners . . . the clerk of the court of common pleas, the sheriff, and probate judge, and one person to be appointed by the judge of the court of common pleas" (the R.C. 153.36 panel) pursuant to R.C. 153.36. To determine how the requirements of R.C. 2501.18 and R.C. 153.36 operate in harmony with each other, we must consider a board of county commissioners' general authority to manage and control county buildings and the authority of a court of appeals to obtain supplies and facilities necessary to the performance of its duties. *See* 1987 Op. Att'y Gen. No. 87-039, at 2-262 ("[t]he powers of the county commissioners to protect and preserve county buildings must,

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unilaterally, may be without authority to perform on behalf of 'the court'"); *see also* R.C. 2501.07 ("[a] majority of the judges of the court of appeals, competent to sit, is necessary to form a quorum, or to make or render any order, judgment, or decree"); R.C. 2501.013(D) ("[i]n the fourth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court"); *State ex rel. Hawke v. LeBlond*, 108 Ohio St. 126, 132-133, 140 N.E. 510 (1923) ("the court is a tribunal organized for the purpose of administering justice, while the judge is the officer who presides over that tribunal. . . . A court is an incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice"); *Bd. of Cnty. Comm'rs of Montgomery Cnty. v. Hensley*, 2d Dist. No. 19754, 2003-Ohio-5730, at ¶13 (two judges out of a five-judge county court did not have authority to appoint personnel); *State ex rel. Krakowski v. Stokes*, 16 Ohio App. 3d 62, 66-67, 474 N.E.2d 695 (Cuyahoga County 1984) (single judge, despite being the presiding judge and administrative judge, of a multi-judge municipal court did not have the authority to order additional significant duties upon the clerk of the municipal court).

The manner in which the judges of the Fourth District Court of Appeals exercise the court's authority in determining what facilities and supplies are necessary pursuant to R.C. 2501.18 shall be determined by them in the exercise of their reasonable discretion in accordance with any applicable statutory provisions, the Rules of Superintendence, and the Local Rules of the Fourth District Court of Appeals. *See* 2000 Op. Att'y Gen. No. 2000-041, at 2-254; *see, e.g.,* R.C. 2501.06 (designation of presiding and administrative judges for court of appeals); R.C. 2501.07 ("[a] majority of the judges of the court of appeals . . . is necessary to form a quorum, or to make or render any order, judgment, or decree"); Ohio Sup. R. 3 (designation or election of presiding judge); Ohio Sup. R. 3.01 (powers and duties of presiding judge); Ohio Sup. R. 3.02 (presiding judge may serve as an administrative judge); Ohio Sup. R. 4 (designation or election of administrative judge); Ohio Sup. R. 4.01 (powers and duties of administrative judge); Ohio Sup. R. 4.02 (modification or vacation of administrative judge actions); Ohio Sup. R. 4.04 (administrative judge may serve as presiding judge); Ohio 4th Dist. Loc. App. R. 18 (appointment of presiding and administrative judge for the Fourth District Court of Appeals).

however, be evaluated in relation to the interests of the judiciary in having facilities that permit the proper and efficient operation of the courts'').

Generally, a board of county commissioners is charged with the control and management of county-owned buildings. *Dall v. Cuyahoga Cnty. Bldg. Comm'n*, 24 Ohio Dec. 9, 11-12 (C.P. Cuyahoga 1913) (''[t]he board [of county commissioners] is the representative and guardian of the county, having the management and control of its property and financial interests, and has exclusive and original jurisdiction over all matters pertaining to county affairs, except in respect to matters the cognizance of which is exclusively vested in some other officer or person''); 2007 Op. Att'y Gen. No. 2007-045, at 2-447 to 2-448; 1989 Op. Att'y Gen. No. 89-029, at 2-122 (''[t]he board of county commissioners, as a general rule, is charged with the management and control of county property''). A board of county commissioners' control and management are limited, however, with respect to portions of county-owned buildings that are occupied by the courts. 1989 Op. Att'y Gen. No. 89-029, at 2-122 (''an exception to the general rule operates so that the board of county commissioners does not have full control over the facilities occupied by the common pleas court. The full control is vested in the commissioners only as to facilities *not* occupied by the court''). This limitation results from the separation of powers principle and the inherent authority of a court to secure facilities necessary to the exercise of its functions. *See* 2005 Op. Att'y Gen. No. 2005-028, at 2-292 (quoting *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph one)) (''[t]he powers of a county's board of commissioners in relation to the county's courts, however, are not determined solely by statute, but are also limited by the principle that, 'the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers'''); 1989 Op. Att'y Gen. No. 89-029, at 2-122 to 2-123.

''[T]he primary purpose of the courthouse is to provide a permanent seat of justice.'' *State ex rel. Hottle v. Bd. of Cnty. Comm'rs of Highland Cnty.*, 52 Ohio St. 2d 117, 119, 370 N.E.2d 462 (1977); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 65, 119 N.E. 136 (1917); *see also Zangerle v. Court of Common Pleas of Cuyahoga Cnty.*, 141 Ohio St. 70, 82, 46 N.E.2d 865 (1943) (''the primary and predominant purpose of a courthouse is for the uses of the court and to provide the facilities essential for the proper and efficient discharge of the duties and functions thereof''). A board of county commissioners has a legal duty to ''furnish all things coupled with the administration of justice within their county.'' *State ex rel. Hottle v. Bd. of Cnty. Comm'rs of Highland Cnty.*, 52 Ohio St. 2d at 119. A court has a prevailing right to use and occupy rooms within a courthouse when necessary to the administration of justice. *Id.* at 120. This prevailing right is ''premised upon a separation of powers whereby the court is to be free from interference with its independent exercise of proper and efficient judicial functions.'' 1989 Op. Att'y Gen. No. 89-029, at 2-123.

As an independent branch of government, ''[c]ourts of general jurisdiction[6] . . . possess all powers necessary to secure and safeguard the free and untrammeled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.'' *Zangerle v. Court of Common Pleas of Cuyahoga Cnty.*, (syllabus, paragraph 2) (footnote added); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. at 66 (''[t]he judicial power is a separate and independent department of government, and when a building is erected, and the whole or a part thereof is provided or assigned by the building commission to the use of this independent department of government, such building, or such part as may be so assigned, naturally and necessarily comes within the control of that department, otherwise a conflict of authority might seriously impede the administration of justice''). Courts of general jurisdiction have the authority to ''pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and may exercise control over the courthouse to the extent required to assure the provision, equipment and maintenance *in the courthouse* of rooms and facilities essential for their proper and efficient operation.'' *Zangerle v. Court of Common Pleas of Cuyahoga Cnty.,* (syllabus, paragraph 3).

Although the courts possess broad authority to determine the suitability of facilities provided for their use, the exercise of this authority is not unfettered. Rather, such authority must be exercised reasonably. *See State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 154-55, 126 N.E.2d 57 (1955) (''[a]ssuredly, a court of general jurisdiction has great inherent power to acquire and control the ordinary facilities which are essential to secure and safeguard the free and untrammeled exercise of its functions. However, that inherent power can not be exercised except for the acquisition of necessary as distinguished from desirable quarters and space''). Whether a particular improvement, repair or renovation is appropriate depends upon whether it is '''necessary and essential to the operation of the court.''' *In re Furnishings and Equipment for the Judge, Courtroom and Personnel of Courtroom Two*, No. WD-79-62, 1980 Ohio App. LEXIS 9800, at **12-13 (Wood County May 28, 1980) (quoting 1976 Op. Att'y Gen. No. 76-064, at 2-217); *see also* 2005 Op. Att'y Gen. No. 2005-028, at 2-295 (a board of county commissioners must approve a court of common pleas' funding request if the expenditure is part of the court's administration of business and is reasonable and necessary); 1993 Op. Att'y Gen. No. 93-043, at 2-217 (same as previous parenthetical); 1987 Op. Att'y Gen. No. 87-039, at 2-262 (a court is entitled to the provision of suitable facilities and has the authority to assert control over such facilities to the extent ''necessary for the proper and efficient operation of the court''). The question of whether

[6] A ''court of general jurisdiction'' is defined as ''[a] court having unlimited or nearly unlimited trial jurisdiction in both civil and criminal cases.'' *Black's Law Dictionary* 406 (9th ed. 2009). We recognize that a court of appeals is not a court of general jurisdiction. Nevertheless, the cited authority is analogous and instructive in that it demonstrates that the discretion to determine what facilities or supplies are necessary is afforded the judicial branch as a separate and independent branch of government. A similar level of discretion undoubtedly is afforded all levels of the judiciary, including a court of appeals.

furnishings, alterations, repairs, or improvements are necessary and essential is, in part, a question of fact. *State ex rel. Hottle v. Bd. of Cnty. Comm'rs of Highland Cnty.*, 52 Ohio St. 2d at 120; *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. at 155-56.

In carrying out their respective duties in providing and maintaining facilities for the judiciary, a board of county commissioners and a court of appeals have a responsibility to cooperate with one another. *See* 1998 Op. Att'y Gen. No. 98-005, at 2-33. The responsibility of different branches of government to cooperate concerning financial matters has been recognized by the courts. *See, e.g., State ex rel. Hague v. Ashtabula Cnty. Bd. of Comm'rs*, 123 Ohio St. 3d 489, 2009-Ohio-6140, 918 N.E.2d 151, at ¶23 ("'a reasonably exercised spirit of mutual cooperation among the branches of government is essential'"); *State ex rel. Britt v. Bd. of Cnty. Comm'rs, Franklin Cnty.*, 18 Ohio St. 3d 1, 3, 480 N.E.2d 77 (1985) ("[i]n this budgetary and funding process, we have noted that a tripartite balance of power must exist and should be respected by each branch of government . . . 'it is axiomatic that a court should cooperate, whenever possible, with the legislative budget process'"); 1998 Op. Att'y Gen. No. 98-005, at 2-33.

Therefore, when an alteration, repair, or improvement to a courthouse is proposed in order to provide or maintain accommodations for a court of appeals judge, R.C. 2501.18 requires a board of county commissioners to provide the facilities, furnishings, and other conveniences that the court deems necessary. Plans for the alterations, repairs, and improvements must be submitted to the board of county commissioners of the county in which the courthouse is situated for approval by a majority of the commissioners, the clerk of the court of common pleas, the sheriff, the probate judge, and the person appointed by the court of common pleas. R.C. 153.36. In acting under R.C. 2501.18 and R.C. 153.36, all of the parties involved shall act reasonably and cooperatively. A court of appeals should deem necessary only those furnishings, alterations, repairs, or improvements that are essential to the efficient operation of the court.

**Conclusions**

It is, therefore, my opinion, and you are hereby advised:

1. Expenses specified in R.C. 2501.18 that are incurred in providing and maintaining office facilities for judges of a court of appeals that has not selected a principal seat shall be shared proportionately by the counties comprising the district in accordance with R.C. 2501.181(D).

2. R.C. 153.36, alone, does not affect the payment of the expenses incurred for the repairs and renovations made to office space in a county courthouse that is used by a court of appeals judge. The expenses shall be allocated in accordance with R.C. 2501.181(D).

3. A court of appeals has the authority to determine whether a repair or renovation of office space used by a court of appeals judge is appropriate; however, that determination must be made reasonably and the repair or renovation must be necessary and essential to the efficient operation of the court.