December 16, 2005

The Honorable Robert J. Batchelor
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116

SYLLABUS: 2005-044

Revenue from a levy under R.C. 5705.24 may be used to fund a "Child Victim" Detective's position within the office of the county sheriff if it is reasonably determined that funding for that position is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language by which the levy was adopted.

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OPINION NO. 2005-044

The Honorable Robert J. Batchelor
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116

Dear Prosecutor Batchelor:

We have received your request for an opinion concerning the use of funds derived from a county tax levy for children services adopted pursuant to R.C. 5705.24. You have asked whether revenue from this levy may be used to fund the position of "Child Victim" Detective within the office of the county sheriff.

As you describe the situation with which you are concerned, the Coshocton County Department of Job and Family Services (CCDJFS) has a Division of Children Services that is funded by a county tax levy for children services under R.C. 5705.24. The levy is for the purpose of supporting children services and the care, protection and placement of abused, neglected and dependent children. The Director of CCDJFS has asked if part of the levy revenue may be used to fund the position of "Child Victim" Detective, within the Office of the Coshocton County Sheriff, to be assigned exclusively to the investigation of child abuse and child sexual assault cases. For the reasons below, we find that revenue from a levy under R.C. 5705.24 may be expended in this manner, provided that it is reasonably determined that funding for the "Child Victim" Detective's position is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language by which the levy was adopted.

**Tax levy under R.C. 5705.24 for children services**

R.C. 5705.24 authorizes a board of county commissioners, after providing the normal and customary general fund appropriations for the support of children services and the care and placement of children, to submit to the voters the issue of levying a tax in excess of the 10-mill limitation to supplement funding for these purposes. *See* Ohio Const. art. XII, § 2; R.C. 5705.02; R.C. 5705.07. A levy imposed under R.C. 5705.24 is a special levy, and taxes collected from a levy imposed under R.C. 5705.24 may be expended for no purposes other than those set forth in

the statute – namely, "any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children." R.C. 5705.24; *see* Ohio Const. art. XII, § 5 ("[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); R.C. 5705.04; R.C. 5705.09(D); R.C. 5705.10; 1990 Op. Att'y Gen. No. 90-069 at 2-289 to 2-290; *see also* 2000 Op. Att'y Gen. No. 2000-048 at 2-296 to 2-297; 1997 Op. Att'y Gen. No. 97-030 at 2-176 ("[i]t is . . . fundamental under Ohio law that money that is derived from a particular tax levy may be expended only for the purpose for which that levy was adopted").

The procedure by which a levy under R.C. 5705.24 is adopted requires a resolution by the board of county commissioners and the submission of a ballot issue to the voters. R.C. 5705.24; R.C. 5705.25. Levy proceeds may be expended only as provided in the resolution and ballot language.[1]

**County responsibility for children services**

Under Ohio law, counties are given various options regarding the manner in which they provide services for children. *See* R.C. 5153.01; R.C. 5153.02; R.C. 5153.15. You have informed us that, in Coshocton County, the children services duties are performed by a division of the county department of job and family services,[2] which serves as the public children services agency.[3] Thus, in Coshocton County, the Division of Children Services within CCDJFS is responsible for providing children services and the care, protection and placement of abused, neglected and dependent children, including the investigation of reports of alleged child abuse or neglect under R.C. 2151.421. For purposes of this opinion, we limit our analysis to public children services agencies of this type.

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[1] The resolution and ballot language cannot expand the purposes for which tax revenues may be expended beyond the purposes established by the language of R.C. 5705.24, but may restrict the purposes for which tax revenues may be expended to specified purposes that come within the purposes authorized by R.C. 5705.24. *See* 1990 Op. Att'y Gen. No. 90-069 at 2-289 to 2-292; *see also* 2000 Op. Att'y Gen. No. 2000-048 at 2-296.

[2] The county department of job and family services is an agency of county government with a wide variety of powers and duties that it performs under the control and direction of the board of county commissioners. R.C. 329.01; R.C. 329.04.

[3] Pursuant to R.C. 5153.02, a public children services agency may be a county children services board, a county department of job and family services, or a private or governmental entity designated under R.C. 307.981.

The basic duties of a public children services agency with regard to the investigation of allegations of child abuse or neglect are set forth in R.C. 2151.421. That statute in some instances requires and in other instances permits persons to submit reports of known or suspected child abuse or neglect. R.C. 2151.421(A) and (B); *see also* R.C. 5153.16(A)(1). Reports of this sort may be made directly to a public children services agency or may be referred to the public children services agency by a municipal or county peace officer. R.C. 2151.421(A), (B), and (D).

The purpose of R.C. 2151.421 is to protect children from abuse or neglect, to prevent any further neglect or abuse of children, to enhance and protect the welfare of children and, whenever possible, to preserve the family unit. R.C. 2151.421(I); *see Haag v. Cuyahoga County*, 619 F. Supp. 262, 281 (N.D. Ohio 1985), *aff'd*, 798 F.2d 1414 (6th Cir. 1986). R.C. 2151.421 "manifests the clear intention of the General Assembly that these social service agencies shall protect children from abuse and neglect and eliminate the source of any such abuse." *Brodie v. Summit County Children Servs. Bd.*, 51 Ohio St. 3d 112, 117, 554 N.E.2d 1301 (1990).

When a public children services agency receives, under R.C. 2151.421, a report of known or suspected child abuse or neglect or a known or suspected threat of child abuse or neglect, the agency (with limited exceptions) is required to investigate the report "to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible." R.C. 2151.421(F)(1); *see also* R.C. 5153.16(A)(1). The public children services agency's investigation must be made "in cooperation with" the appropriate law enforcement agency and in accordance with the memorandum of understanding prepared pursuant to R.C. 2151.421(J). R.C. 2151.421(F)(1). Upon completion of its investigation, the public children services agency "shall submit a report of its investigation, in writing, to the law enforcement agency." R.C. 2151.421(F)(1); *see also* 13 Ohio Admin. Code 5101:2-34-36(H) ("[p]rior to completion of the case resolution, the PCSA shall contact law enforcement and document in the case record information regarding the status of their criminal investigation").

The public children services agency is required to make protective services and emergency supportive services available to the children whose abuse or neglect is alleged. R.C. 2151.421(I). The agency must also "make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention." R.C. 2151.421(F)(2).

In each county, a memorandum of understanding is prepared by the public children services agency and signed by various other persons and entities, including the county sheriff or other county peace officer, a juvenile judge or the judge's representative, chief municipal peace officers within the county, the county prosecuting attorney, and the county humane society. R.C. 2151.421(J)(1). The memorandum of understanding sets forth "the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities"

under R.C. 2151.421 and related provisions. R.C. 2151.421(J)(2); *see* R.C. 2919.21(C) (contributing to a child becoming a dependent or neglected child); R.C. 2919.22(B)(1) (endangering children); R.C. 2919.23(B) (interfering with custody of child or ward of juvenile court); R.C. 2919.24 (contributing to unruliness or delinquency of a child); 13 Ohio Admin. Code 5101:2-34-71. The memorandum of understanding must have as two of its primary goals: (1) the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to R.C. 2151.421(A) or (B); and (2) when feasible, providing for only one interview of a child who is the subject of a report made pursuant to R.C. 2151.421(A) or (B). R.C. 2151.421(J)(2).

**Authority to use revenue from a levy under R.C. 5705.24 to fund the position of sheriff's detective assigned to child abuse and sexual assault cases**

As discussed above, tax revenue received from a levy under R.C. 5705.24 may be expended for any purpose that comes within the language of the statute and also within the language of the resolution and ballot by which the levy was adopted. The statute permits expenditures "necessary for the support of children services and the care and placement of children." R.C. 5705.24. "The question of what is necessary for the support of children services and the care and placement of children is a matter of fact, and its determination involves the exercise of judgment." 1990 Op. Att'y Gen. No. 90-069 at 2-290; *see also* 1997 Op. Att'y Gen. No. 97-001 at 2-2.

R.C. 2151.421 imposes upon a public children services agency various duties relating to the investigation of reports of child abuse or neglect and to procedures for following up on the investigations, as outlined above. R.C. 2151.421 thus indicates that these duties are integral parts of the functions of a public children services agency and the provision of children services. The county sheriff is included among the officials and entities with responsibilities under R.C. 2151.421. R.C. 2151.421 requires that the public children services agency's investigation "be made in cooperation with the law enforcement agency" and in accordance with the memorandum of understanding. R.C. 2151.421(F)(1). As a signatory to the memorandum of understanding, the county sheriff is part of the network of persons and entities participating in the investigation and follow up procedures relating to child abuse and neglect. R.C. 2151.421(J). The sheriff thus works with the public children services agency to carry out the purpose of R.C. 2151.421. *See Haag v. Cuyahoga County*, 619 F. Supp. at 270 (the purpose of R.C. 2151.421 is "to protect children from abuse and/or neglect and to eliminate the source of any such abuse"); *see also Brodie v. Summit County Children Servs. Bd.*, 51 Ohio St. 3d at 117.

In 1990 Op. Att'y Gen. No. 90-069, a prior Attorney General concluded that "[a] county children services board may use moneys derived from a levy under R.C. 5705.24 to support a Child Assault Prosecution Unit within the county prosecutor's office if the children services board, in the reasonable exercise of its discretion, determines that support of such a Unit is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language." 1990 Op. Att'y Gen. No. 90-

069 (syllabus, paragraph 1). An analogous conclusion is appropriate in this instance. Revenue from a levy under R.C. 5705.24 may be used to fund a "Child Victim" Detective's position within the office of the county sheriff if it is reasonably determined that funding for that position is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language by which the levy was adopted. *See also* 1997 Op. Att'y Gen. No. 97-001. If the "Child Victim" Detective's position is funded entirely with revenue from the levy under R.C. 5705.24, care should be taken to assure that the "Child Victim" Detective is given only duties that are consistent with the purposes of the levy.

**Concerns about delegation of responsibilities under R.C. 2151.421**

You have asked whether the proposal to use children services levy revenue to fund a "Child Victim" Detective's position in the county sheriff's office might constitute an impermissible delegation by CCDJFS of its responsibility to investigate reports of suspected child abuse under R.C. 2151.421. The basis for your concern is footnote 3 of 1990 Op. Att'y Gen. No. 90-069, which reads as follows:

> It should be noted that a county children services board has no authority to delegate to any other agency, public or private, its responsibility to investigate reports of suspected child abuse under R.C. 2151.421. *See Haag v. Cuyahoga County*, 619 F.Supp. 262, 270-71 (N.D. Ohio 1985); *aff'd*, 798 F.2d 1414 (1986); 8 Ohio Admin. Code 5101:2-34-31; 1989 Op. Att'y Gen. No. 89-108 at 2-531. It is, therefore, assumed that any investigatory services performed by the prosecutor's office pursuant to a contract with the children services board would be different from the investigations performed by the county children services board pursuant to R.C. 215.421.

1990 Op. Att'y Gen. No. 90-069 at 2-291 n.3; *see also* 1979 Op. Att'y Gen. No. 79-067 (finding that a children services board was not permitted to delegate the duties of investigation and disposition of reported cases of child abuse and neglect set forth in R.C. 2151.421 to a private entity).

The prohibition against delegation of investigatory duties is set forth in 13 Ohio Admin. Code 5101:2-33-07(A), as follows: "The PCSA [public children services agency] shall not enter into contracts with other entities or delegate its responsibility to perform its investigation duties outlined in section 2151.421 of the Revised Code." Similarly, *Haag v. Cuyahoga County*, 619 F. Supp. at 271, states that a county welfare department [now a county department of job and family services] may not delegate its investigatory responsibility under R.C. 2151.421 "to another agency, whether it be public or private."

Despite this express prohibition against delegating investigatory duties, a public children services agency is required by R.C. 2151.421 to carry out its investigation in cooperation with

appropriate law enforcement agencies, including the sheriff's office. R.C. 2151.421(F)(1); *see also* R.C. 5153.16(A)(12) (requiring a public children services agency to cooperate with various persons and entities in matters relating to the welfare of children). *Brodie v. Summit County Children Services Board* states that "[t]he authority and responsibility to conduct such investigations [under R.C. 2151.421] and to submit the necessary reports are vested solely in the county department of human services or the children services board, *in cooperation with law enforcement agencies.*" *Brodie v. Summit County Children Servs. Bd.*, 51 Ohio St. 3d at 117 (emphasis added); *see also Haag v. Cuyahoga County*, 619 F. Supp. at 271 (the county agency acting under R.C. 2151.421 "has the authority and responsibility to gather information from all relevant sources, including interviews with the child victim, the alleged perpetrator and various witnesses, medical records, school records, and all other sources that may provide relevant information").

In addition, rule 5101:2-34-32(B) authorizes a public children services agency to "request assistance of law enforcement at any time during an assessment/investigation for any reason including, but not limited to, worker safety." 13 Ohio Admin. Code 5101:2-34-32(B). Rule 5101:2-34-35(A) requires a public children services agency to make a cross referral to law enforcement if a report of alleged child abuse or neglect could constitute a criminal offense, if the public children services agency requires assistance in the assessment, or if a third-party investigation is required. 13 Ohio Admin. Code 5101:2-34-35(A). The public children services agency is required to contact law enforcement within twenty-four hours of receipt of the report to share information in accordance with the child abuse and neglect memorandum of understanding and the provisions of rule 5101:2-34-38. 13 Ohio Admin. Code 5101:2-34-35(B); *see also* 13 Ohio Admin. Code 5101:2-34-36(B) ("[w]hen a PCSA receives a report alleging a criminal act against a child of assault or sexual activity involving an out-of-home perpetrator, the PCSA shall: (1) Establish police jurisdiction and refer the report to the appropriate law enforcement authority within twenty-four hours of receipt of the report"). As mentioned above, the public children services agency is required to submit a written report of its investigation to the law enforcement agency, and to document in the case record information regarding the status of the law enforcement agency's criminal investigation. R.C. 2151.421(F)(1); 13 Ohio Admin. Code 5101:2-34-36(H). Ohio law thus mandates cooperation between the public children services agency and the office of county sheriff in child protection matters.

Further, the memorandum of understanding sets forth the normal operating procedures to be employed by all concerned officials, including both officials of the public children services agency and officials of the county sheriff's office, in carrying out their respective responsibilities. R.C. 2151.421(J)(2). By statute, the memorandum of understanding must include "[s]tandards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected." R.C.

2151.421(J)(3)(b). Rule 5101:2-34-71 requires that the memorandum of understanding include the following:

> (5) Standards and procedures for handling and coordinating investigations of reported cases of child abuse and neglect including sharing of investigative reports and procedures specific to cases which:
> (a) Involve out-of-home care child abuse or neglect;
> (b) Require third party involvement;
> (c) Involve an emergency requiring immediate response;
> (d) Involve a child death in which abuse or neglect is suspected as the cause; and
> (e) Involve alleged withholding of appropriate nutrition, hydration, medication, or medically indicated treatment from disabled infants with life-threatening conditions.

13 Ohio Admin. Code 5101:2-34-71(C)(5); *see also* 13 Ohio Admin. Code 5101:2-34-71(C)(4) (memorandum of understanding must include a system for consultation that includes, at a minimum, "the PCSA's protocol for consulting with law enforcement, the prosecuting attorney's office, and the juvenile judge for any cases which may require their intervention or assistance").

To achieve the goals of R.C. 2151.421(J)(2) that unnecessary interviews be eliminated and, when feasible, a child who is the subject of a report of suspected child abuse or neglect be interviewed only once, it is evident that there must be substantial cooperation among concerned officials. The public children services agency must be able, as part of its investigation, to make use of information gathered by other entities pursuant to their statutory activities. *See* 13 Ohio Admin. Code 5101:2-34-71(C) (5), (6), (7), and (8); 1989 Op. Att'y Gen. No. 89-108 at 2-531 n.3 (language stating that, under R.C. 2151.421, public children services agencies have exclusive authority to conduct investigations and make recommendations to law enforcement agencies is in no case used "to indicate that the existence of such authority on the part of a public children services agency in any way restricts the responsibility of other entities to exercise authority granted to them by other statutes"). Thus, it is expected that an investigation made by a public children services agency in accordance with R.C. 2151.421 may make use of information from the office of the county sheriff.

With regard to the proposal you have described, you have stated:

> CCDJFS staff insist that under the proposed plan there would be no delegation of responsibility for the investigation of suspected child abuse because CCDJFS caseworkers would still take part in investigations, and the "Child Victim" Detective will supplement their work. The "Child Victim" Detective will also add to the protection of children by gathering evidence for the prosecution of felony sex offenders whose victims are children.

The proposal anticipates that the public children services agency would proceed to investigate reports under R.C. 2151.421 while supplementing its investigation with the efforts of the "Child Victim" Detective. The Detective would perform duties appropriate to the office of sheriff that are directed toward the protection of children through such activities as gathering evidence for the prosecution of felony sex offenders whose victims are children. An arrangement of this sort does not appear to involve any improper delegation of the responsibilities of the public children services agency.

The fact that the public children services agency is responsible under R.C. 2151.421 for investigating reports of suspected child abuse or neglect and making recommendations to the county prosecutor or city law director, *see* R.C. 2151.421(F); *Haag v. Cuyahoga County*, 619 F. Supp. at 281, does not mean that the agency is not able to make use of resources and findings of other concerned public bodies that may be relevant to its investigations. Ohio law clearly contemplates that law enforcement officials, including sheriffs and their staffs, will also investigate reports of child abuse and neglect. *See, e.g.*, 13 Ohio Admin. Code 5101:2-34-36(H); 13 Ohio Admin. Code 5101:2-34-38(B)(2); 13 Ohio Admin. Code 5101:2-34-71(C)(5). R.C. 2151.421 does not require duplication of efforts. Instead, it mandates cooperation and permits an arrangement under which revenue from a levy under R.C. 5705.24 is used to fund the position of a detective in the sheriff's office who is assigned exclusively to the investigation of child abuse and child sexual assault cases.

**Conclusion**

For the reasons set forth above, it is my opinion, and you are advised, that revenue from a levy under R.C. 5705.24 may be used to fund a "Child Victim" Detective's position within the office of the county sheriff if it is reasonably determined that funding for that position is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language by which the levy was adopted.

Respectfully,

JIM PETRO
Attorney General