

# Mary Taylor, CPA Auditor of State

## **Bulletin 2009-009**

**Date Issued:** July 14, 2009

**TO:** County Law Libraries  
Law Library Resources Boards  
Law Librarians  
Law Library Boards of Trustees  
County Auditors  
Independent Public Accountants

**FROM:** Mary Taylor, CPA  
Ohio Auditor of State

**SUBJECT:** Law Libraries: Implementing HB 420

### **I. Summary**

- HB 420 of the 127<sup>th</sup> General Assembly (the Bill) repealed the provisions of HB 66 and HB 363 that set a phase-out funding schedule between counties and county law library associations (LLA).
  - Therefore, commencing January 1, 2009, counties are responsible for paying for library space and librarian compensation.
  - Commencing July 1, 2009, the Bill creates a Law Library Resources Board (LLRB) in each county. The LLRB will replace the LLAs, becoming the managing and decision-making authority for the law library.
- Effective January 1, 2010, the Bill creates a Law Library Resources Fund (LLRF) in each county.
  - LLA must transfer their public cash and property purchased with public funds to their county on or before January 1, 2010.
  - The Auditor of State (and contracting independent accountants) will continue to audit law libraries separately from their counties through fiscal years ending December 31, 2009.
  - The Auditor of State (and contracting independent accountants) will include LLRF transactions within the scope of county audits for fiscal years ending December 31, 2010 and subsequent fiscal years.

### **II. Law Library Resources Board (LLRB)**

#### **A. Duties**

The Bill enacted ORC § 307.51, creating a LLRB in each county. The LLRB is responsible for providing legal research, reference, and library services to the county and

to the municipal corporations, townships, and courts within the county and managing the coordination, acquisition, and utilization of legal resources.<sup>i</sup> The LLRB will also be responsible for employing and setting the compensation of a county law librarian who will serve as the chief administrator of the LLRB.<sup>ii</sup> The LLRB may also employ and set the compensation for any additional staff it deems necessary.<sup>iii</sup> The LLRB has the authority to adopt any rules necessary for its operation and is required to adopt rules for (a) the expenditures of funds that are appropriated for its use by the county commissioners, (b) public access and hours of operation of the law library, (c) fees for services, and (d) the receipt of gifts to the county law library resources fund.<sup>iv</sup>

In summary, LLRB will assume the duties previously required of LLA.

### **B. Membership and Meetings**

The LLRB will be comprised of five members, all of whom must be county residents.<sup>v</sup> The county commissioners appoint 2 members, the prosecuting attorney appoints one member, the common pleas judge appoints one attorney member, and the municipal and county court judges appoint one attorney member.<sup>vi</sup> These appointments must be made on or before July 1, 2009, and the LLRB must hold its first meeting on or before July 15, 2009. After the initial meeting, the LLRB must meet at least four times each year.<sup>vii</sup> In addition to the five appointed members referenced above, the LLRB will also include two members of the county that have been appointed by the board of trustees of the law library within that county.<sup>viii</sup> These two members will serve from July 1, 2009 through December 31, 2010.<sup>ix</sup>

Additionally, the Bill provides for the creation of a transition advisory council.<sup>x</sup> This council is to be comprised of the current LLA's board of trustees, and will be in effect from July 1, 2009 to December 31, 2010.<sup>xi</sup> The Bill does not provide a stated purpose or proscribe duties for the council. As the council will be in place during the transition period, however, it is assumed that the council will advise the LLRB on transition matters.

### **III. Law Library Resources Fund (LLRF)**

The Bill creates a LLRF, effective January 1, 2010, and, at that time, will begin receiving all revenue that is required to be deposited into the fund.<sup>xii</sup> Expenditures from such fund will be made pursuant to the board of county commissioners' <sup>xiii</sup> annual appropriation measure.

Under HB 420, the LLRB is not legally separate from its county. Therefore under Governmental Accounting Standard No. 14, the county should classify the LLRF as a special revenue fund in the county treasury.<sup>1</sup>

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<sup>1</sup> We believe special revenue fund classification will still be appropriate when counties adopt Governmental Accounting Statement No. 54, because the LLRFs report an activity related to restricted revenue, consistent with paragraphs 30, 31 and 116 of the Statement.

## **A. LLRF Funding Sources**

- Fine and penalty money collected by the various courts within the county.<sup>xiv</sup>
- Fees the LLRB determines will be charged for law library services.<sup>xv</sup>
- Any monies that are designated for deposit into the fund by gifts or bequests from any person, firm, or corporation.<sup>xvi</sup>
- The county commissioners may, if they choose, appropriate additional funds from the county general fund for the use of the county law library resources board.<sup>xvii</sup>

## **B. Budgetary Process**

The County must adopt its tax budget by the 15<sup>th</sup> of July for the following year.<sup>xviii</sup> The LLRF is subject to the general county budgeting process, and the LLRB must prepare and submit to the county commissioners an annual estimate of the revenue and expenditures of the board for the calendar year commencing January 1, 2010 and for each year thereafter.<sup>xix</sup> The County will use this estimate to prepare its tax budget. This estimate must clearly specify the source of the revenue and include a specific request for monies to be appropriated to the county law library resources fund from the county's general fund.<sup>xx</sup>

Typically, such estimates of revenue and expenditures from county departments, boards and commissions (which would include the LLRB) must be received at least 45 days prior to July 15<sup>th</sup>.<sup>xxi</sup> This presents a practical problem for the LLRB, as it is possible that its first meeting will not take place until the beginning of July, 2009. This will require that the LLRB, in its first meeting, be prepared to create and submit an estimate of the revenue and expenditures of the board for 2010 to the county commissioners. We suggest that each LLRB work with the transition council and the LLA to secure these figures in anticipation of the first LLRB meeting.

(Also, given the practical problem described above, the Auditor of State and contracting independent accountants will not cite noncompliance with these budgetary deadlines for the 2010 budget if the LLRB makes a good faith effort to submit the required information as soon as is practically possible.)

## **C. Interest Earned on the Fund**

Interest earned on the LLRF is payable to the county's general fund.

## **IV. Law Library Associations - What happens in 2009?**

2009 is a transition time for LLAs. During 2009, counties are completely liable for compensating the law librarian and up to two assistants, and for providing space.<sup>xxii</sup>

## **A. Refund to Relative Income Sources**

HB 420 repeals ORC 3375.56 effective January 1, 2010. ORC 3375.56 required LLA to refund at least 90% of their unencumbered December 31 funds to contributing subdivisions after the end of each calendar year.

Therefore the last calendar year to which this refund requirement applied was the year ended December 31, 2008.

## **B. Transfer of Assets and Cash**

Uncodified provisions of the Bill provide that each LLA will transfer both of the following to the LLRB on or before January 1, 2010:

1. All “unspent fines and penalties” in the LLA’s general fund and retained monies fund collected pursuant to ORC §§ 3375.50 to 3375.53.
  - a. Therefore, the cash payment to a county should equal the sum of the cash balances in its general and retained monies fund as of the transfer date. When the LLA transfers its cash to the county, it should also send unpaid invoices to the county auditor for encumbering and payment.
  - b. The County should record these amounts in the LLRF.
    - i. Subsequent to the transfer, all public money due to the LLA or LLRB should be deposited into the LLRF and not paid to the LLA.
    - ii. (Otherwise, the LLA would have public money still in its possession after January 1, 2010, contrary to the intent of the law.)
  - c. A LLA need not pay its *private money* to the county. LLAs may continue to exist as either private associations or nonprofit corporations, and may spend their private money for any purpose consistent with its tax exemption.
    - i. Private monies include: membership dues, overdue book charges, and photocopying charges. Fees the Library collects for the use of books and copiers remain private even though the books and copiers may have been purchased with public funds.
    - ii. This is not public money and will not be subject to audit by the Auditor of State.
  - d. Per Auditor of State Bulletin 2004-007, a LLA’s accounting records should segregate private money in a fund separate from the general and retained monies funds.
    - i. Bulletin 2004-007 described how law libraries should identify and segregate general and retained monies funds vs. private funds if they had not previously segregated them. The Auditor of State believes this Bulletin has provided LLA sufficient time to identify and segregate any private money.
    - ii. If a LLA has not yet segregated public and private funds, it must determine the amounts it deems private vs. public prior to transferring its cash to the county.
      1. The Auditor of State (and contracting IPAs) will accept reasonable determinations / measurements of public vs. private monies. When an LLA makes this determination after this bulletin’s issuance, auditors should document their assessment of the reasonableness of the determination, and should recompute or otherwise briefly test the public

vs. private fund calculation as part of their 2009 financial statement audit.

2. If an LLA does not determine the amounts of its private funds, it should transfer all its cash to the county for deposit into the LLRF.
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2. All personal property the association can reasonably identify as having been purchased by the fines and penalties in the LLA's general fund or retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.
    - a. The Auditor of State and contracting IPA's should inquire regarding the method the library's management used to differentiate property purchased from the general and retained funds vs. private funds. Audit documentation should include the results of these inquiries, and the results of other limited procedures (observation, examination of records, etc) supporting:
      - i. Whether management's method of determining the assets to transfer is reasonable.
      - ii. That the property transfer actually occurred and complied with the method management prescribed.
    - b. We will not report noncompliance for reasonable, good faith efforts to identify and transfer to the county the property purchased from the general and retained funds.
    - c. Consistent with the guidance in 1.d.ii.2 above, if an LLA cannot reasonably determine personal property purchased with private funds, it should transfer all its personal property to the LLRB.

### **C. Final Audit of Law Library Associations**

As noted in the *Summary* above, the Auditor of State and contracting IPAs will continue to audit LLAs as separate entities for fiscal years through December 31, 2009. Audits for 2009 should include procedures related to the transfer of property and cash described above.

The 2009 financial statements should report the transfer of its general and retained money funds to its county when paid. If this transfer occurred prior to December 31, 2009, the general and retained money funds should report zero cash balances as of December 31, 2009. If the transfer occurred January 1, 2010 (or later), the financial statements should disclose in the notes the date and amount of the transfer. Auditors should obtain evidence supporting this transfer.

Note disclosure should also very briefly describe whether HB 420 required a transfer of property to the county and whether the transfer occurred.

At her own initiative, all rights and duties of the parties with respect to the audit of any year may be terminated by the Auditor of State. If there are remaining years on any contract impacted by this bulletin, Regional Chief Auditors will direct the Auditor of State Audit Administration to notify all parties of the cancellation of those remaining years in writing.

## Questions and Comments

If you have any questions regarding the information in this Bulletin, please contact the AOS Legal Division at (800) 282-0370.



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Auditor of State

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- <sup>i</sup> ORC § 307.51(B)
- <sup>ii</sup> ORC § 307.51(C)
- <sup>iii</sup> Id.
- <sup>iv</sup> ORC § 307.51(D)(1)
- <sup>v</sup> ORC § 307.511(A)
- <sup>vi</sup> ORC § 3075.11(A)(1) – (A)(5)
- <sup>vii</sup> ORC §§ 307.511(D), 307.512
- <sup>viii</sup> ORC § 307.511(C)
- <sup>ix</sup> Id.
- <sup>x</sup> ORC § 307.51(E)
- <sup>xi</sup> Id.
- <sup>xii</sup> ORC § 307.514
- <sup>xiii</sup> Id.
- <sup>xiv</sup> ORC § 307.515
- <sup>xv</sup> ORC § 307.51(D)(1)(c)
- <sup>xvi</sup> ORC § 307.514
- <sup>xvii</sup> ORC 307.513(B)
- <sup>xviii</sup> ORC § 5705.28(A)(2)
- <sup>xix</sup> ORC §§ 307.513(A), 5705.28(C)(1)
- <sup>xx</sup> ORC § 307.513(A)
- <sup>xxi</sup> ORC § 5705.28(C)(1)
- <sup>xxii</sup> ORC § 3375.49