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MEMORANDUM

To: Hon. Richard Parrott (ret.), Chmn.
Hon. Don Fraser
Hon. Michael Grigsby
Perry Parsons, Esq.
Frank Howard, Esq.
Tom McCarthy

Fr: David Phillips, Union County Prosecuting Attorney

Re: Union County Law Library Resources Board

Da: September 3, 2009

Fellow board members:

At our recent meeting, a couple of questions were raised with regard to the UCLLRB. The purpose of this memorandum is to answer those questions.

1. Should the UCLLRB purchase legal resource materials for county offices from the LLRB budget?

Yes. One of the primary purposes of H.B. 420 was to bring "greater coordination and cooperation to the acquisition of legal resources for the entire county." The board is to act as a "clearinghouse" for purchase of legal resources by county offices.¹

After January 1, 2010, county offices are *prohibited from purchasing*, leasing, renting, operating, or contracting for the use of *any legal research or reference materials* available in print, audio, visual, or other medium or, notwithstanding the law governing the county automatic data processing board, any equipment necessary to support the utilization of that medium *without prior approval* of the library resources board.²

¹ CCAO Advisory Bulletin 2009-01.

² R.C. 307.51(G)

The act provides further that if approval is denied, the county office may purchase, lease, rent, operate, or contract for the use of any legal research or reference materials available in print, audio, visual, or other medium "at its own expense."³ This language implies that if the purchase of the materials is approved, they should be at the expense of the LLRB, and not at the expense of the county entity.

Given this latter provision, one might think the LLRB power to approve or disapprove the purchase of legal resources is illusory – if we disapprove the purchase, the county office could simply purchase the materials out of their own budget. The way to strengthen this provision is for the commissioners to not appropriate funds to the various county offices for the purchase of legal resource materials.

Of course, this would also mean that the Commissioners should appropriate those general fund monies to the LLRB to pay for those materials which are necessary for the various offices. This also means that we will have to survey not only what legal resources are being purchased by the various county offices, but also the cost thereof in order to accurately submit a budget in accordance with 307.513(A), so the general funds may be appropriated pursuant to R.C. 307.513(B).

It is anticipated that there will be cost savings as a result of pooling of resources and less duplication among county offices of the same legal materials.⁴

2. Does this limitation on the purchase of materials apply to the courts?

No, it does not.⁵ A "county office" means any officer, department, board, commission, or agency of a county.⁶ Courts and judges are not listed.

Presumably, this is in recognition of the fact that Ohio courts have the inherent power to order the funding necessary to fulfill their purposes. A coordinate branch of government may not impede a court's business by refusing reasonable funding requests. The determination of necessary administrative expenses rests solely with the court, and another branch of government may not substitute its judgment for that of the court.⁷

Therefore, the courts may purchase legal research materials without approval from the LLRB.

3. Are the Commissioners obligated to provide space and utilities for the law library?

Commissioner McCarthy had questioned whether the LLRB could be forced to pay rent and utilities. The law provides that, "For the use of the law library, the board of county

³ Id.

⁴ Final Report of the Task Force on Law Library Associations, p.2.

⁵ This was an apparent disappointment to the Commissioners Association. See, CCAO bulletin 2009-01, p.9

⁶ R.C. 307.51(A)

⁷ *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, 423 N.E.2d 80 * * *; *State ex rel. Foster v. Lucas Cty. Bd. of Commrs.* (1968), 16 Ohio St. 2d 89, 242 N.E.2d 884 * * *.

commissioners *shall* provide space in the county courthouse or in any other building located in the county seat, and utilities for that space.”⁸

While this has traditionally been at the cost of the Board of Commissioners, that section has been amended by 152 v H420 to provide for a cost-sharing between the “board of trustees” and the commissioners until 2012, at which time the County Law Library Association Board would pay 100% of the expense. However, section 101.03 repeals this section effective December 31, 2009.

Because the statutory authority for “cost-sharing” has been repealed, it appears to be the obligation of the Commissioners to provide space and utilities to the LLRB as any other county entity or board.

4. What is the employment status of the law librarian and treasurer?

Both are employees of the Union County Law Library Association, a private not for profit association. Because the Union County LLA will cease operations effective December 31, 2009 their employment will be at an end.

The board is mandated to employ a law librarian, who will be in the unclassified civil service.⁹ Nothing in the law requires the LLRB to hire the employees of the LLA; however, section 311 of the bill provides that, if this board does so:

“[U]pon that person's employment by a county law library resources board, the board shall use the following methods for determining the employee's vacation accrual rate and credit for accrued but unused vacation leave and sick leave:

(A) For the librarian and assistant librarians who received compensation pursuant to section 3375.49 of the Revised Code, as amended and repealed by this act, and were paid upon warrant of the county auditor, the county law library resources board shall do all of the following:

(1) Credit to the employee accrued but unused sick leave acquired during service with the law library association as if the employee were transferring from one public agency to another public agency pursuant to section 124.38 of the Revised Code;

(2) Consider all of the employee's prior service with the law library association as service with the county for purposes of determining years of service pursuant to section 325.19 of the Revised Code;

(3) One of the following:

(a) Compensate the employee for accrued but unused vacation leave acquired during service with the law library association at the employee's final rate of

⁸ R.C. 3375.49, as amended by H.B. 420, eff. Dec. 31, 2009.

⁹ R.C. 305.51(B).

pay while employed by the association, except that this compensation of vacation leave shall not exceed the vacation leave a county employee is permitted to earn and accumulate under section 325.19 of the Revised Code;

(b) Credit to the employee accrued but unused vacation leave acquired during service with the law library association, except that this credited vacation leave shall not exceed the vacation leave a county employee is permitted to earn and accumulate under section 325.19 of the Revised Code.

According to the county auditor, Monica Overly was employed in February 5, 2001; as of the date of my call, she has accrued sick leave of 58.15 hours, and accrued vacation of 55.32 hours. If she were to be employed as an employee of the LLRB, she would have 8 years of service. After 8 years of service, an employee is entitled to 120 hours of vacation at full pay.¹⁰

For the board's consideration, the auditor provided the following salary history for the librarian:

2001	\$12,540.00
2002	\$18,401.52
2003	\$21,669.34
2004	\$25,408.80
2005	\$30,372.18
2006	\$35,057.60
2007	\$36,009.65
2008	\$37,089.79
2009	\$38,023.88

Julia Smith has indicated that she would not continue in her role due to other obligations.

5. Can the UCLLRB provide resources – notably Lexis passwords – to private attorneys who are not employees of the county?

No, although the Lexis-Nexis services can likely be made available at the library. The statute mandates the LLRB to “provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and shall manage the coordination, acquisition, and utilization of legal resources.”¹¹

While the statutes allows for fees “for services” and prohibits “access fees” to the library,¹² there is no provision allowing the LLRB to provide and pay for Lexis-Nexis (or other) services for members of the public outside of the confines of the library.

¹⁰ Union County Personnel Policy 6.3(A); R.C. 325.19(A)(1).

¹¹ R.C. 307.51 (B).

¹² R.C. 307.51(D)(1)(c); (3)

The LLRB is funded through a combination of sources, including the general fund. These monies are public monies,¹³ subject to the lending aid and credit provisions of the Ohio Const. art. VIII, § 6.

As a creature of statute, the law library resources board may exercise only those powers as are expressly conferred upon it by statute or that may be necessarily implied therefrom¹⁴. Further, it is a well-established principle that statutes authorizing the expenditure of public moneys are to be strictly construed, since all public moneys constitute a public trust.¹⁵ Thus, any doubt with respect to the legality of a particular expenditure of public moneys is to be resolved against the expenditure.

Therefore, I conclude Lexis-Nexis services cannot be provided to law firms or lawyers free of charge.

¹³ 117.01(C) "Public money" means any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

¹⁴ *Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975); *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947).

¹⁵ *State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967)