

February 27, 2002

OPINION NO. 2002-008

The Honorable Alison Boggs  
Union County Prosecuting Attorney  
233 West Sixth Street  
Marysville, Ohio 43040

Dear Prosecutor Boggs:

You have submitted an opinion request concerning the funding of certain expenses of a county family and children first council. Your specific questions are:

1. Can the administrative agent, executive committee or the fiscal agent for the county based Family and Children First Council, (hereinafter Council for Union County Families, CUCF) as defined by O.R.C. 121.37, compel mandated members of council to contribute extra funding to help cover the administrative costs for running the program, i.e., salary for the council's executive director, etc., when that cost exceeds the grant money given by the state?
2. Can the administrative agent, executive committee or the fiscal agent for the county based Family and Children First Council, (hereinafter Council for Union County Families, CUCF) order this payment from select mandated members while not requiring other mandated members to contribute?
3. Can the administrative agent, executive committee or the fiscal agent for the county based Family and Children First Council order MRDD or other mandated members whose funding is derived from tax levies, to pay this additional cost for non-service expenditures? Are these types of expenditures allowable under the wording of a tax levy that did not contemplate, and therefore did not publicize, that the tax proceeds would go toward these costs?

## **I. Statutory Framework**

### **A. Ohio Family and Children First Cabinet Council**

Before answering your specific questions, it would be useful to examine the manner in which a county family and children first council (hereinafter county council) is established and operates. The General Assembly has created the Ohio Family and Children First Cabinet Council (hereinafter cabinet council), chaired by the Governor or the Governor's designee. R.C. 121.37(A)(1). Members of the cabinet council include the Superintendent of Public Instruction and the directors of Youth Services, Job and Family Services, Mental Health, Health, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities, and Budget and Management. As described in R.C. 121.37(A)(2), "[t]he purpose of the cabinet council is to help families seeking government services. This section shall not be interpreted or applied to usurp the role of parents, but solely to streamline and coordinate existing government services for families seeking assistance for their children."

In order to carry out its purpose, the cabinet council has been granted various powers, including the power to advise and make recommendations to the Governor and the General Assembly concerning the provision of services to children, to advise and assess the delivery of services to children by local governments, to enter into contracts and seek grants from the federal government or private organizations, and to enter into contracts with and administer grants to county family and children first councils and other entities of local government to plan and coordinate the delivery of state and local services to families and children. R.C. 121.37(A)(2).

### **B. County Family and Children First Councils**

#### **1. Organization and Membership**

The provision of these services at the local level is provided for in R.C. 121.37(B)(1), which requires "[e]ach board of county commissioners [to] establish a county family and children first council." R.C. 121.37(B)(1) further requires each county council to include certain local officials and others as members.<sup>1</sup> In establishing its county council, the board of county commissioners may also "invite any local public or private agency or group that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member of its county council." R.C. 121.37(B)(1).

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<sup>1</sup> Among those required by R.C. 121.37(B)(1) to be included as members of a county family and children first council (county council) are at least three individuals "whose families are or have received services from an agency represented on the council or another county's council," R.C. 121.37(B)(1)(a), the director of the county department of job and family services, the superintendent of the county board of mental retardation and developmental disabilities, a judge of the juvenile court, the superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, and a representative of the municipal corporation with the largest population in the county.

## 2. Duties

The duties of a county council are described in R.C. 121.37(B)(2), which requires each county council to provide for:

(a) Referrals to the cabinet council of those children for whom the county council cannot provide adequate services;

(b) Development and implementation of a process that annually evaluates and prioritizes services, fills service gaps where possible, and invents new approaches to achieve better results for families and children;

(c) Participation in the development of a countywide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the “Education of the Handicapped Act Amendments of 1986”;

(d) Maintenance of an accountability system to monitor the county council’s progress in achieving results for families and children;

(e) Establishment of a mechanism to ensure ongoing input from a broad representation of families who are receiving services within the county system.

In carrying out these functions, a county council is subject to R.C. 121.37(B)(3)(a), which requires a county council, absent an exemption granted by the cabinet council, to “comply with the policies, procedures, and activities prescribed by the rules or interagency agreements of a state department participating on the cabinet council whenever the county council performs a function subject to those rules or agreements.”<sup>2</sup>

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<sup>2</sup> See, e.g., 6 Ohio Admin. Code 3701-65-01 (adopted by the Department of Health concerning cooperation by boards of health of city or general health districts and other organizations to coordinate service delivery to children and families); 13 Ohio Admin. Code 5101:2-39-50 (adopted by the former Department of Human Services concerning cooperation by local children services entities); 15 Ohio Admin. Code 5122:2-1-10 (adopted by the Department of Mental Health for cooperation by alcohol, drug addiction and mental health services boards or community mental health boards established under R.C. Chapter 340); 15 Ohio Admin. Code 5123:2-1-10 (adopted by the Department of Mental Retardation and Developmental Disabilities concerning cooperation by county boards of mental retardation and developmental disabilities). See generally R.C. 121.37(A)(2)(g) (authorizing Family and Children First Cabinet Council (cabinet council) to enter into interagency agreements that encourage coordination at the state and local level and that may include provisions regarding the receipt, transfer, and expenditure of funds).

### 3. Statutory Funding Provisions

The focus of your questions is the manner in which county councils are to be funded. R.C. 121.37(B) does not expressly address this concern and makes no provision for the funding of such councils by the members or the entities the members represent.<sup>3</sup> The funding of the administration and operation of county councils is, instead, mentioned only indirectly in R.C. 121.37<sup>4</sup> and other statutes.<sup>5</sup> As stated in 1993 Op. Att’y Gen. No. 93-050 at 2-241: “R.C.

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<sup>3</sup> Cf. R.C. 120.23(E) (the agreement creating a joint county public defender commission “shall provide for the allocation of the proportion of expenses to be paid by each county”); R.C. 167.06(A) (stating, in part, “[t]he governing bodies of the member governments may appropriate funds to meet the expenses of the [regional] council [of governments]. Services of personnel, use of equipment, and office space, and other necessary services may be accepted from members as part of their financial support. The members of the council, or the state of Ohio, its departments, agencies, instrumentalities, or political subdivisions or any governmental unit may give to the council moneys, real property, personal property, or services. The council may establish schedules of dues to be paid by its voting members to aid the financing of the operations and programs of the council in the manner provided in the agreement establishing the council or in the by-laws of the council”); R.C. 713.21 (providing, in part, that the proportion of the costs of regional planning to be borne respectively by the members of a regional planning commission shall be determined by a majority of the member planning commissions and boards of county commissioners or township trustees); R.C. 5502.26 (a countywide emergency management agency established by agreement among its members “shall be supported financially by the political subdivisions entering into the countywide agreement”).

<sup>4</sup> For example, R.C. 121.37(B)(4)(a)(iii) authorizes a county council’s administrative agent to “[r]eceive by gift, grant, devise, or bequest any moneys, lands, or other property for the purposes for which the council is established.” Also, R.C. 121.37(B)(4)(a) and R.C. 121.37(B)(4)(b)(iii) mention the preparation of an annual budget for the council. The word “budget,” as used in R.C. 121.37 is not defined by statute. According to *Webster’s New World Dictionary* (2d college ed. 1978) 184, however, the word “budget” means, in part, “a plan or schedule adjusting expenses during a certain period to the estimated or fixed income for that period.” See generally R.C. 1.42 (stating, in part, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”). Thus, R.C. 121.37 contemplates that each county council will have some unspecified sources of income from which to pay its expenses.

<sup>5</sup> One source of funding for county family and children first councils is the wellness block grant program, which is administered by the Children’s Trust Fund Board. Pursuant to R.C. 121.371, the Children’s Trust Fund Board must make block grants to each county’s family and children first council. The amount granted to each county council is determined by the Board and by the Ohio Family and Children First Cabinet Council. Each county council is required to appoint a “fiscal agent” for receipt of these block grant moneys. R.C. 121.371.

121.37 *implies* ... that the agencies that constitute a local cluster [(predecessor of county family and children first councils)] will use their own resources to fulfill their statutory obligations as members of a local cluster,” (emphasis added).

## II. Authority of County Councils to Require Financial Contributions from Members

Having examined the broad framework created by R.C. 121.37 for the provision of family and children services, we now turn to your first question, which asks whether “the administrative agent, executive committee or the fiscal agent for the county based Family and Children First Council, ... as defined by O.R.C. 121.37, [may] compel mandated members of council to contribute extra funding to help cover the administrative costs for running the program, i.e., salary for the council’s executive director, etc., when that cost exceeds the grant money given by the state.”

In answering this question, we must begin with the proposition that a county family and children first council, or county council, is a creature of statute with only those powers and duties vested in it by statute. 2000 Op. Att’y Gen. No. 2000-010.<sup>6</sup> Similarly, the county council’s administrative agent, executive committee, and fiscal agent, having been created by statute, have only those powers granted by statute, either expressly or by necessary implication. *See* note six, *supra*.

### A. Authority of Administrative Agent

The first part of your question concerns the authority of a county council’s administrative agent<sup>7</sup> to compel members or the entities they represent to provide funds for payment of the council’s administrative or operational costs.<sup>8</sup> Among the duties of the administrative agent is

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<sup>6</sup> *See generally State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6, 7 (1917) (concerning legislative grants of power to political subdivisions and their officers, boards, and commissions, “[a] grant of power, by virtue of a statute, may be either express or implied, but the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective. In short, the implied power is only incidental or ancillary to an express power, and, if there be no express grant, it follows, as a matter of course, that there can be no implied grant”).

<sup>7</sup> Pursuant to R.C. 121.37(B)(4)(a), a county council may select from various designated public entities, *e.g.*, the board of county commissioners, the juvenile court, to serve as its administrative agent.

<sup>8</sup> R.C. 121.37(B)(4)(a) describes the powers of the administrative agent, in pertinent part, as follows:

The administrative agent for a county council may do any of the following on behalf of the council:

that of ensuring that all council expenditures “are handled in accordance with policies, procedures, and activities prescribed by state departments in rules or interagency agreements that are applicable to the council’s functions.”<sup>9</sup> R.C. 121.37(B)(4)(a). *See also* R.C. 121.37(B)(3)(a) (unless exempted therefrom by the cabinet council, each county council “shall comply with the policies, procedures, and activities prescribed by the rules or interagency agreements of a state department participating on the cabinet council whenever the county council performs a function subject to those rules or agreements”). *See generally* note two, *supra*. None of the state department rules concerning the activities of county councils, however, address the imposition of a charge against members of the council or the entities they represent to provide funding for the administration or operation of the county council. *See generally id.*

Absent an applicable state department rule or interagency agreement authorizing the imposition of such charges against county council members or the entities they represent, the administrative agent’s duty to “ensure that all expenditures are handled in accordance with policies, procedures, and activities prescribed by state departments in rules or interagency

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(i) Enter into agreements or administer contracts with public or private entities to fulfill specific council business. Such agreements and contracts are exempt from the competitive bidding requirements of [R.C. 307.86] if they have been approved by the county council and they are for the purchase of family and child welfare or child protection services or other social or job and family services for families and children. The approval of the county council is not required to exempt agreements or contracts entered into under [R.C. 5139.34, R.C. 5139.41, or R.C. 5139.43] from the competitive bidding requirements of [R.C. 307.86].

(ii) As determined by the council, provide financial stipends, reimbursements, or both, to family representatives for expenses related to council activity;

(iii) Receive by gift, grant, devise, or bequest any moneys, lands, or other property for the purposes for which the council is established. The agent shall hold, apply, and dispose of the moneys, lands, or other property according to the terms of the gift, grant, devise, or bequest. Any interest or earnings shall be treated in the same manner and are subject to the same terms as the gift, grant, devise, or bequest from which it accrues.

*See also* R.C. 121.37(B)(4)(b)(i) (authority of board of county commissioners that serves as administrative agent to appoint executive committee).

<sup>9</sup> Whether there are any interagency or other agreements applicable to a county council’s functions that would require any council members or the entities they represent to provide funds for the operation of the council is a matter that cannot be determined by means of an opinion of the Attorney General. *See generally* 1990 Op. Att’y Gen. No. 90-111, at 2-502 (the Attorney General is “unable to make findings of fact or to interpret provisions of a particular contract or agreement”). For purposes of discussion, we will assume that no such agreements exist.

agreements that are applicable to the council's functions," R.C. 121.37(B)(4)(a), does not include the authority to impose a charge such as you describe. Moreover, none of the powers conferred upon the administrative agent elsewhere in R.C. 121.37(B)(4)(a) or R.C. 121.37(B)(4)(b)(i), *see* note eight, *supra*, authorize the administrative agent to assess a charge against county council members or the entities they represent for the administration or operation of the county council. We conclude, therefore, that a county council's administrative agent has no authority to assess a charge against the members of a county council or the entities they represent for the purpose of administering or operating the county council.

### **B. County Council Executive Committee**

Let us now consider whether the executive committee of a county council has authority to impose upon county council members or the entities they represent a charge such as you describe. In the event that the board of county commissioners is designated as the county council's administrative agent, the board of county commissioners may create an executive committee from the council's membership to which it may delegate its duties as administrative agent. R.C. 121.37(B)(4)(b)(i). As discussed above, in the absence of an applicable state department rule or interagency agreement authorizing the imposition of charges against county council members or the entities they represent, an administrative agent is without authority to impose charges of that sort. It follows, therefore, that, if the administrative agent has no such authority, an executive committee could not acquire such power pursuant to a delegation of authority from the administrative agent under R.C. 121.37(B)(4)(b)(i). *See generally Allen v. Scott*, 104 Ohio St. 436, 443, 135 N.E. 683, 685 (1922) ("[t]he power of an agent cannot be greater than that of the principal").

A county council's executive committee has additional statutory powers. For example, an executive committee may hire, with the approval of the board of county commissioners, an executive director to assist the council in executing its functions. R.C. 121.37(B)(4)(b)(ii). The board of county commissioners may also "require the executive committee to submit an annual budget to the board for approval." R.C. 121.37(B)(4)(b)(iii).

None of the statutorily defined powers of an executive committee, however, authorize it to impose charges upon its members or the entities they represent to fund the administration or operations of the county council. Accordingly, we conclude that an executive committee of a county council has no authority to impose such charges.

### **C. County Council Fiscal Agent**

The final part of your first question concerns the authority of a county council's fiscal agent to impose a charge upon its members. Unlike the other entities about which you ask, the fiscal agent of a county council is not mentioned in R.C. 121.37. Rather, the position of fiscal agent for a county council was recently created in the amendment to R.C. 121.371 by Am. Sub. H.B. 283, 123rd Gen. A. (1999) (eff., in pertinent part, Jan. 1, 2001). R.C. 121.371 describes the functions of the fiscal agent, in pertinent part, as follows:

County councils shall use the funds they receive through wellness block grants to fund community-based programs of prevention services that address issues of broad social concern, as determined by the cabinet council and the [children's trust fund] board, and to fund state-directed training, evaluation, and education programs pertaining to the issues being addressed. Each county council shall submit to the [children's trust fund] board a program and fiscal plan that outlines its proposal for expenditure of its block grant AND SHALL, AFTER CONSULTING WITH THE BOARD OF COUNTY COMMISSIONERS, DESIGNATE A FISCAL AGENT TO RECEIVE THE BLOCK GRANT.

As requested by the [children's trust fund] board on behalf of the cabinet council, each county council shall submit program and fiscal accountings regarding the use of its block grant. The [children's trust fund] board and the cabinet council shall establish criteria for assessing a county council's progress in achieving the goals of the wellness block grant program. If a county council does not operate in accordance with the program guidelines and criteria established by the [children's trust fund] board and the cabinet council, the [children's trust fund] board and the cabinet council may revise the allocation of funds that the county council receives. (Language effective Jan. 1, 2001, shown in uppercase letters.)

Other than acting as recipient of wellness block grant moneys on behalf of the county council, however, the fiscal agent has no clearly defined powers or duties. The duties associated with receipt of these grants by county councils, *e.g.*, preparation of a proposed program and fiscal plan for proposed and actual uses of grant moneys, are not imposed upon the fiscal agent, but, instead, upon the county council. Nothing in the language of R.C. 121.371, however, authorizes either the county council or its fiscal agent to impose a charge upon the members of a county council or the entities they represent to fund the administration or operation of the council. We conclude, therefore, that a county council's fiscal agent has no such authority.

### **III. Conclusion**

In answer to your first question, we conclude, therefore, that, absent a statute, rule, or interagency agreement applicable to the operations of a county family and children first council that authorizes a county council's administrative agent, executive committee, or fiscal agent to impose a charge upon council members or the entities they represent for the purpose of funding the administration or operation of the council, the administrative agent, executive committee, and fiscal agent have no such authority.

Your second question asks whether the administrative agent, executive committee, or fiscal agent of a county council may impose such a charge only upon select mandated members while not requiring other mandated members to contribute. Your third question is whether certain tax levy moneys could be used by council members or the entities they represent to pay the charge imposed by a county council's administrative agent, executive committee, or fiscal agent. Because we have concluded, in answer to your first question, that the administrative

agent, executive committee, and fiscal agent of a county council are without authority to impose such a charge, it is not necessary to answer your last two questions.

Based on the foregoing, it is my opinion, and you are hereby advised that, absent a statute, rule, or interagency agreement applicable to the operations of a county family and children first council that authorizes a county council's administrative agent, executive committee, or fiscal agent to impose a charge upon council members or the entities they represent for the purpose of funding the administration or operation of the council, the administrative agent, executive committee, and fiscal agent of such council have no such authority.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

February 27, 2002

The Honorable Alison Boggs  
Union County Prosecuting Attorney  
233 West Sixth Street  
Marysville, Ohio 43040

SYLLABUS:

2002-008

Absent a statute, rule, or interagency agreement applicable to the operations of a county family and children first council that authorizes a county council's administrative agent, executive committee, or fiscal agent to impose a charge upon council members or the entities they represent for the purpose of funding the administration or operation of the council, the administrative agent, executive committee, and fiscal agent of such council have no such authority.