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September 2, 2010

OPINION NUMBER 10-079

Richard E. Dobbins
 Summit Law Library Resources Board
 209 South High St., 4th Floor
 Akron, OH 44308

Re: Request for Legal Opinion – Applicability of Summit County Ordinance Chapter 169 to Summit Law Library Resources Board and Authority to Hire Staff to Fill Vacant Position

Syllabus:

The Summit Law Library Resources Board is subject to Summit County Codified Ordinance Chapter 169.

Pursuant to R.C. 307.51(C) and Summit County Codified Ordinance 169.04(j), the Summit Law Library Resources Board has authority to fill a vacant, budgeted staff position without County Council approval.

Dear Mr. Dobbins:

In your letter dated August 23, 2010, you have asked for an opinion on the following employment related issues facing the Summit Law Library Resources Board (LLRB).

Is the LLRB an independent board that is responsible for all rules and regulations governing the Akron Law Library?

Must the LLRB conform to the requirements set out in Chapter 169 of the Summit County Codified Ordinances regarding personnel policies and procedures, or can it establish its own policies and procedures?

Is the LLRB authorized to independently hire staff to fill a vacant position or must the LLRB receive approval from County Council, due to the current hiring freeze?

ANALYSIS

The LLRB is an independent board, with members appointed by various governmental groups and constituencies within the County. R.C. 307.511. However, the LLRB is not completely independent. The County exercises certain controls over the LLRB, such as providing oversight and approval authority of contracting (R.C. 307.51(F)) and providing funding from the general fund on a discretionary basis (R.C. 307.513(B)). The hiring of staff for the LLRB is controlled by R.C. 307.51(C). It provides:

The board shall employ a county law librarian who shall be the chief administrator of the county law library resources board and may employ additional staff to perform any functions as determined by the board. The board shall fix the compensation of the county law librarian and any additional employees. All employees of the county law library resources board shall be in the unclassified civil service of the county. (Emphasis added.)

Additionally, R.C. 307.51(D)(1) provides in part:

The board may adopt any rules it considers necessary for its operation...

Section 307.51(C) clearly provides that LLRB employees are in the employ of the county, which indicates that these positions are subject to the rules of the County for unclassified civil service. The Ohio Revised Code and County ordinances provide an array of rules related unclassified civil service. Reading R.C. 307.51(C) and (D) together, it appears that the LLRB may adopt rules for its operation related to employment matters, but they must not conflict with state or county law. As such, rules contained in Summit County Codified Ordinance (SCCO) Chapter 169 apply to the LLRB.

As to your question of filing a vacant position, the hiring freeze as codified in SCCO 169.04(j) applies to certain specified appointing authorities. The LLRB is an independent board not included in the listed authorities, nor is it under the direct control of any of the listed authorities. SCCO 169.04(j) provides, in part:

Temporary Hiring Freeze. Commencing April 1, 2009 and terminating December 31, 2010, no person shall be hired for initial employment by the Fiscal Officer, Clerk of the Court of Common Pleas, Engineer, Prosecutor, Sheriff, County Council, County Executive, Department of Internal Auditing, Human Resource Commission or Office of Consumer Affairs, except as set forth herein.

In the event any of the aforementioned offices are able to demonstrate that the filling of an existing position by hiring a new employee is necessary for the effective and continued operation of the office, County Council may adopt a

Resolution authorizing the hiring of a person to fill said vacancy as an exception to this Section.***

The plain language of SCCO 169.04(j) excludes the LLRB from its terms. R.C. 307.51(C) gives authority to the LLRB to employ staff and to fix the staff's compensation. However, the hiring of staff would be subject to any budget limitations under R.C. 307.513 based on current appropriations. Therefore, the LLRB is not required to seek County Council approval to fill the vacant position.

Based on the foregoing, it is my opinion, and you are hereby advised, that 1) the LLRB must follow employment rules promulgated by the County, including those contained in SCCO Chapter 169, but it may adopt additional rules that are not in conflict with County rules or state law, and 2) the LLRB may proceed to hire staff to fill a vacant position without approval of County Council, assuming that funds have been appropriated for the position.

Very truly yours,

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Prosecuting Attorney



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APPROVED:



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