

Letter No. 04-93
Issuing Checks--Fees and Responsibility

TO: Local Audit and Finance Division Staff

April 1, 1993

Ms. XXXX XXXXXX, Clerk
County of XXXXXX
First Floor, Courthouse
31 XXXXXXXXX Street
XXXXXXX, Michigan XXXXX

Dear Mx. XXXXXX:

You have requested information as to what county department or agency is responsible for preparation and maintenance of the payroll checks and records for the various county departments and whether a service fee may be charged to other county departments for payroll accounting and preparing checks for their employees.

Statutes specify that most agencies or departments you questioned are county agencies and their employees are county employees. A summary of a few of these statutes are:

Mental Health--Michigan Compiled Law (MCL) 330.1204:

A county community mental health program established under this chapter shall be an official agency of the county. A program representing two or more counties, the board of county commissioners of the represented counties shall by agreement determine the county procedures and regulations.

Opinion of the Attorney General No. 5269 dated February 23, 1978, provides in part:

Staff of a county community health program, which serves a single county or an official county agency are employees of the county. When two or more counties establish a mental health program, the boards of commissioners of the represented counties, by agreement, determine the status of employees of the program.

Public Health--MCL 333.2413 and 333.2415:

The local governing entity of a county shall provide for a county health department.

Two or more counties, by a majority vote of each local governing entity and with approval of the department (Michigan Department of Public Health) may unite to create a district health department.

Opinion of the Attorney General No. 0-2712 dated July 2, 1945, states that:

Funds for use of a county board of health must be appropriated by the county board of commissioners from the general fund and can not be supplied by a tax levy for benefit of the board of health which does not itself have taxing power.

NOTE: The county board of commissioners, by resolution may authorize a vote of the electors for an extra voted tax levy to fund public health. If approved by the voters, the voted taxes must be accounted for in a special revenue fund with the budget and claims approved by the board of county commissioners.

Commission on Aging--MCL 400.571 et seq. and 400.581 et seq.:

PA 39 of 1976 authorizes a local unit of government to appropriate funds to provide activities or services to older persons. The local governmental unit may levy taxes for services to older persons. A commission on Aging established by resolution of the legislative body is an agency of the local unit. The legislative body is responsible for adopting a budget, approving claims of the commission and establish operating policies for the commission.

The legislative body may contract with public or private nonprofit corporations or organizations for providing services to older persons.

Similar statutes address other county departments or agencies. The employees of most of these county agencies are employees of the county unless the law provides otherwise. Some exceptions are that employees of a court are employees of that court, county road employees are employees of the road commission and Department of Social Services staff are employees of the State of Michigan.

Our analysis of the above statutes indicates that employees of county agencies and departments are employees of the county unless specifically provided by law.

Your question of who issues county payroll checks was addressed by the court in *Ottawa County Clerk v. Ottawa County Board of Commissioners*, 428 Mich. 300. The decision in part stated that it is the prerogative of the county board of commissioners to determine whether the function of issuing accounts payable and payroll checks is to be performed by the county clerk or controller. It should be noted that by statute (MCL 46.4 and 46.5) the county clerk is responsible for the books, records and accounts of the county board of commissioners and that the clerk is to perform such other and further duties as such board may, by resolution, require.

MCL 46.13b authorizes the county board of commissioners, by a majority vote of its members-elect, to appoint a county controller. Duties of the appointed controller are specified by statute. One duty is to see that a system of accounting is installed and properly kept by every office, officer, and department of the county in strict accord with the provisions of the law. The controller may prescribe and direct the keeping of such other accounts and records and the making of such reports as in his judgment are necessary. In counties that do not have a controller, it would appear that the board of commissioners and clerk, when directed by the board of commissioners, would assign recordkeeping requirements including payroll procedures. When payroll procedures are assigned to other county departments except those assigned by law, the clerk would be responsible to see that the records are properly maintained.

The charging of a fee to county departments or agencies for performing services is not, to our knowledge, addressed in the statutes. Some statutes provide that administrative expenses are the responsibility of the general fund as specified in sections 280.28, 280.33 and 280.196 (13) of the Drain Code. A fee for preparing their checks can not be charged. Legal precedent also specify that if the function or duty is required by law, additional compensation can not be paid for performing that function. The question then, if the duty is required by law, can a fee be charged for performing that function when a fee is not authorized by law. We suggest you consult the county prosecuting attorney or legal counsel as to the county charging a fee when not authorized by statute.

Note: If Federal grant funds are a part of the county department or agency being billed for administrative costs, the allocated costs must be in compliance with the Budget and Accounting Procedures Act of 1950, 31 U.S.C. Sec. 65 et seq. and OMB Circular A-87. The requirements in part are:

Allowable Costs: Costs must be necessary, reasonable, and directly related to the grant. In addition, allocated costs must be legal, proper, and consistent with the policies that govern the recipient's own expenditures.

Cost Allocation Plan: To recover indirect costs, the recipient must have a cost allocation plan, which forms the basis for the percentage indirect (allocated) cost rate. The plan should describe the services provided, explain their relevance to the assisted program, list the expenses to be charged to it and explain the method used to distribute costs.

This letter is not a legal opinion or interpretation of the statutes. Consult your legal representative if a legal opinion is needed.

If I can be of further assistance, please call me at (517) 373-3227 or write Michigan Department of Treasury, Local Audit and Finance Division, P.O. Box 30728, Lansing, Michigan 48909-8228.