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July 15, 2005

Kim Perez
Stark County Auditor
110 Central Plaza S., Suite 220
Canton, OH 44702-1410

Re: Escrow arrangements for payment of auditor fees
Our file no. M101.00257

Dear Mr. Perez:

You have asked whether the auditor may establish an escrow system for payment of transfer fees required by R.C. 319.54, whereby persons filing land transfer documents with the county auditor may deposit monies in advance, from which the auditor's fees will be deducted as they become due and payable.

As you are aware, this office has opined that the county recorder may lawfully institute a system of accounts whereby an agency fund is established in the county treasurer's office into which such escrow monies are deposited by persons regularly doing business with the recorder, which monies are then swept, as utilized, into the appropriate receipt accounts of the county recorder. (Our file no. M120.00075, letter dated July 8, 2002.) That opinion was based on the implied powers of the office to establish reasonable procedures for accomplishing statutory tasks, such as collecting fees, issuing receipts, and accounting for these functions. In the absence of a statutory or constitutional restriction, we deemed the escrow system proposed by the county recorder, properly accounted for, to be a permissible procedure for collecting the fees of the county recorder.

In the case of fees to be administered and collected by the county auditor in connection with the transfer of real property, R.C. §319.202(E) specifies the following:

> In order to achieve uniform administration and collection of the transfer fee required by division (F)(3) of section 319.54 of the Revised Code, the tax commissioner shall adopt and promulgate rules for the administration and enforcement of the levy and collection of such fee.

By conferring on the tax commissioner authority to regulate the "collection of the fee," the statute appears to give the tax commissioner jurisdiction to specify, among other things, whether a system of advance escrow deposit is allowable and, if so, under what terms and conditions. I have spoken with attorneys at the tax commissioner's Division of Tax Equalization, and I am advised that the tax commissioner has not proposed or adopted any rules pursuant to §319.202(E), and has no plans to do so. Moreover, it

was the sense of these attorneys that payment procedures such as your office proposes would not fall into any area of concern for the tax commissioner in any event.

Accordingly, I am of the opinion that a system of advance escrow deposits for the payment of the auditor's real estate transfer fees is lawful if implemented in the manner suggested by our prior advice to the county recorder. That is, "you may institute, in conjunction with the county treasurer, a system of accounts in an agency fund" for the purpose of payment of transfer fees. I also repeat our cautions with respect to considerations that must be taken into account in establishing such a system:

> This practice will require an agreement between the [auditor] and each patron using this method of payment. The agreement must authorize the [auditor], as the agent of the patron, to establish an account for the patron, receive and post the deposits to the account of the patron, and credit any and all fees and costs for transactions of the patron against those deposits. In essence, the [auditor] is undertaking a banking role with regard to any deposits so made. No such agency agreement can be made which does not limit the liability of the [auditor] to the greatest extent practicable. Data safeguards and internal audit procedures should be in place before any agreements are executed or deposits received under this system. The necessity and availability of liability and errors and omissions insurance coverages should be examined prior to embarking on this course.

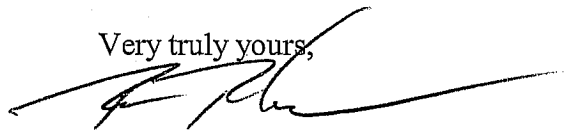
Based on the foregoing, I have concluded and you so advised as follows:

1. The county auditor may lawfully institute a system of accounts whereby an agency fund is established in the county treasurer's office into which escrow monies are deposited by persons regularly doing business with the auditor, which monies are then swept, as utilized, into the appropriate receipt accounts of the county auditor.

2. The Ohio tax commissioner likely has authority to regulate such a system of accounts with respect to real estate transfer fees; however, that authority has not as yet been exercised and so does not restrict the county auditor's present authority to make reasonable provisions for such collection and payment.

If you have any questions concerning this opinion letter, or if you have additional information you feel may be relevant, please do not hesitate to contact me.

Very truly yours,



Ross Rhodes
Assistant Prosecuting Attorney

cc: David Maley