

**AUDITOR OF STATE BULLETIN 97-014**  
**August 12, 1997**

TO: All County Prosecutors  
All County Auditors  
All County Sheriffs  
All County Commissioners  
All Independent Public Accountants

SUBJECT: Furtherance of Justice Fund

INTRODUCTION

Recently, the Auditor of State has received numerous inquiries regarding certain expenditures of Furtherance of Justice (F.O.J.) funds statutorily provided to county prosecutors and county sheriffs. In 1981, the Auditor of State's Office published Auditor of State Circular No. 81-7 which established guidelines regarding the proper use of F.O.J. funds. The information contained in Circular No. 81-7 is still applicable to the use of these funds and should be adhered to by county prosecutors and county sheriffs.

The following is a brief restatement of Circular No. 81-7 and some additional information regarding accounting for F.O.J. funds.

ALLOWANCE FOR F.O.J. FUNDS

In addition to other sources of funding, pursuant to Ohio Rev. Code §§ 325.12 and 325.071, a county prosecutor and county sheriff must be allowed, annually, an amount equal to one-half the officer's salary. This amount is commonly known as the F.O.J. Fund. This allowance is made upon order of the officer to be paid out of the General Fund in an amount not to exceed one-half of the officer's official salary. The officer may not receive this amount unless the officer gives bond in an amount not less than the officer's official salary. Once bond is given, the officer is entitled to the funds without further approval by the county commissioners.

Subject to two exceptions discussed below, the dollar amount provided to the F.O.J. fund is fixed by statute and may not be increased by any means. Donations to the F.O.J. fund are not permitted nor may additional funding be provided at the request of the county officer, even with the approval of the county commissioners. Furthermore, funds may not be transferred into the F.O.J. fund from

another fund, nor may F.O.J. funds be expended and then reimbursed at a later date except in an emergency situation as described in the next section of this bulletin. The amount equal to one-half the officer's official salary is a not-to-exceed amount and additional funding above the statutory limit will be subject to a finding for adjustment in favor of the proper fund by the Auditor of State.

There are two exceptions to the above. The first is the allowance to county prosecutors provided by Ohio Rev. Code § 325.13. This section allows county prosecutors to appeal to the Common Pleas Court for an amount not to exceed \$10,000 for the investigation and prosecution of criminal activities if F.O.J. funds are insufficient. The funds provided under Ohio Rev. Code § 325.13 are to be expended in the same manner as those funds provided under Ohio Rev. Code § 325.12.

The second exception is the authority of a Court, by statute, to distribute a fine or a portion of a fine by any method or on any term as the Court so chooses. In this situation, a Court may order a fine to be paid into a county prosecutor's or county sheriff's F.O.J. Fund. For this distribution to be permissible, a Court Order is required.

#### PERMISSIBLE EXPENDITURES OF F.O.J. FUNDS

F.O.J. funds may be used for expenses incurred in performance of the officer's official duties and in the furtherance of justice. Thus, the expenditure must be both in the performance of the officer's official duties and in the furtherance of justice to be allowable. While this allows for broad discretion and the Auditor of State will not ordinarily substitute its judgment for that of the officer, there is always the additional requirement that the expenditure must be for a proper public purpose.

In order to further assist the county prosecutor and county sheriff in their determination of whether an expenditure from the F.O.J. fund is proper, the following is a list of expenses using F.O.J. funds that have been determined to be allowable:

1. Mileage on a personal car when the car is used for official business. 1933 Op. Att'y Gen. No. 1687.
2. Medical experts to be used either before trial or to testify at trial. 1938 Op. Att'y Gen. No. 2124.
3. Membership dues only if directly related to the performance of the officer's official duties. 1938 Op. Att'y Gen. No. 2959.
4. The purchase of law books. 1939 Op. Att'y Gen. No. 1038.
5. To pay for an extra stenographer needed because of an unusually high case load. 1939 Op. Att'y Gen. No. 1038.

6. The payment of witness expenses which includes board and lodging. 1946 Op. Att’y Gen. No. 1277.
7. To pay for the costs of foreclosure proceedings. 1972 Op. Att’y Gen. No. 72-122.
8. Payment for the costs of obtaining municipal court transcripts. 1976 Op. Att’y Gen. No. 76-069.
9. To pay for the repair of private vehicles used in an emergency rescue operation. 1979 Op. Att’y Gen. No. 79-027.
10. To pay for meals, mementos and retirement gifts. 1982 Op. Att’y Gen. No. 82-006, and 1988 Op. Att’y Gen. No. 88-100.
11. Payment to settle a claim. Stokes v. St. Paul Fire and Marine Insurance Company, 35 Ohio App. 3d 97 (1987).
12. To pay for office equipment. 1988 Op. Att’y Gen. No. 88-100.

The F.O.J. fund is to be used for any purpose the officer, in his judgment, feels is an expense in the performance of his official duties and in the furtherance of justice. However, the board of county commissioners is statutorily authorized to make monetary allowances to be used for the payment of certain expenses. As discussed in Circular No. 81-7, if such an allowance has been made and funds are available, appropriated and unencumbered, the officer must first use these monies before using F.O.J. funds. If, however, the funds in the allowance made by the county commissioners have been exhausted or are already encumbered, F.O.J. funds may be used as payment for the expense.

As an exception to the above, if a situation arises in which monies are needed immediately and the usual procedure for obtaining prior appropriated and unencumbered monies is too time consuming, the expenditure may be made from the F.O.J. fund. The expenditure may be reimbursed from the normal appropriation account at a later date if monies are still available and unencumbered. The reimbursement expenditure from the normal appropriation account is subject to the requirements of Ohio Rev. Code § 5705.41.

Please note that the F.O.J. fund may never be used to circumvent compliance with competitive bidding requirements or prevailing wage laws.

## CONFIDENTIALITY ISSUES

Auditor of State Circular No. 81-7 acknowledges the fact that county prosecutors and county sheriffs need to use F.O.J funds for confidential expenditures. However, Circular 81-7 also recognizes the public purpose need to document these expenditures and establishes methods for such documentation.

Circular No. 81-7 also allows an exception to the above. The documentation requirements do not apply in those situations where it is determined that maintenance of the required documentation would increase the risk of danger of physical harm or intimidation or would frustrate the purpose for which the confidential expenditure is made. It is within the county prosecutor or county sheriff's exercise of reasonable discretion to determine whether this exception applies. A necessary requirement to this exception is an affidavit executed by the officer setting forth the amount of the expenditure and either the check number or the receipt number related to the expenditure as well as a statement of a general nature of the expenditure. If such an affidavit is executed, the Auditor of State will not require production of the actual check or receipt and will not make any further inquiry into the detail surrounding the expenditure unless there is probable cause to believe that the affidavit is false. If no affidavit is executed, the officer must produce sufficient documentation to support that the expenditure is for a proper public purpose. Please note that a mere assertion by the officer that an expenditure is confidential is not sufficient to negate the documentation requirements.

## ACCOUNTING FORMS

For your information, attached are examples of a general cash book detailing expenses from the F.O.J. fund and a bank reconciliation. Lastly, attached is an updated form to be used for the Furtherance of Justice Annual report.

If you have any questions or if you need a copy of Auditor of State Circular No. 81-7, please call the Auditor of State's Legal Division at 1-800-282-0370.

GENERAL CASHBOOK

FURTHERANCE OF JUSTICE FUND

DATE	DESCRIPTION	RECEIPT NUMBER	CHECK NUMBER	VARIOUS EXPENDITURES				CREDIT	BALANCE
				NARCOTICS & VICE ACTIVITY	PURCHASE OF STOLEN PROPERTY	CANINE EXPENSES	OTHER		
01/01/97	INITIAL DEPOSIT			\$0	\$0	\$0	\$0	\$15,000	\$15,000
01/31/97	MTD TOTALS			0	0	0	0	15,000	15,000
01/31/97	YTD TOTALS			0	0	0	0	15,000	15,000
02/19/97	SGT. GREEN - STOLEN PROPERTY PURCHASE		1072	0	250	0	0		14,750
02/21/97	SGT. GREEN - UNEXPENDED MONEY FROM PROPERTY PURCHASE	110		0	(25)	0	0		14,775
02/28/97	MTD TOTALS			0	225	0	0	\$0.00	225
02/28/97	YTD TOTALS			0	225	0	0	15,000	\$14,775
03/19/97	SGT. CLARK - DRUG BUY		1073	150	0	0	0		14,625
03/20/97	SGT. TRUE - DRUG BUY		1074	255	0	0	0		14,370
03/24/97	SGT. TRUE - UNEXPENDED MONEY FROM DRUG BUY	111		(20)	0	0	0		14,390
03/31/97	MTD TOTALS			385	0	0	0	\$0.00	385
03/31/97	YTD TOTALS			385	225	0	0	15,000	14,390
04/05/97	SGT.FLAKE - STOLEN PROPERTY PURCHASE		1075	0	500	0	0		13,890
04/23/97	CAPT. BLACK - STOLEN PROPERTY PURCHASE		1076	0	1,000	0	0		12,890
04/30/97	SGT. STAKE - DRUG BUY		1077	5,000	0	0	0		7,890
04/30/97	MTD TOTALS			5,000	1,500	0	0	\$0.00	6,500
04/30/97	YTD TOTALS			5,385	1,725	0	0	15,000	7,890
05/02/97	SGT. FLAKE - UNEXPENDED MONEY FROM PROPERTY PURCHASE	112		0	(350)	0	0	\$0.00	8,240
05/06/97	SGT. GREEN - DRUG BUY		1078	2,000	0	0	0		6,240
05/31/97	MTD TOTALS			2,000	(350)	0	0	\$0.00	1,650
05/31/97	YTD TOTALS			7,385	1,375	0	0	15,000	6,240
09/01/97	CAPT. BLACK - STOLEN PROPERTY PURCHASE		1079	0	500	0	0		5,740
09/13/97	CAPT. BLACK - UNEXPENDED MONEY FROM DRUG BUY	113		0	(10)	0	0		5,750
09/30/97	MTD TOTALS			0	490	0	0		490
09/30/97	YTD TOTALS			7,385	1,865	0	0	15,000	5,750
12/18/97	CAPT. BLACK - DRUG BUY		1080	3,000	0	0	0		2,750
12/20/97	CAPT. BLACE - UNEXPENDED MONEY FROM DRUG BUY	114		(40)	0	0	0		2,790
12/31/97	MTD TOTALS			2,960	0	0	0		2,960
12/31/97	YTD TOTALS			10,345	1,865	0	0	15,000	2,790
12/31/97	COUNTY TREASURY - RETURN BALANCE TO ZERO		1081	0	0	0	0	-2790	0

NOTE: This example is to be used for the Individual and the Combined Cashbook Systems.

**SAMPLE BANK RECONCILIATION  
FOR JANUARY 1997**

Ending Bank Balance Per F.O.J. Fund	\$ 2,790.00	
Total Depository Balance	----- \$2,790.00	
Less - O/S Checks	2,790.00	
Adjusted Bank Balance	----- <u>0.00</u>	
Cashbook Balance as of 1/31/97		<u>\$ 00.00</u>

**FURTHERANCE OF JUSTICE ANNUAL REPORT  
COUNTY SHERIFF'S OFFICE**

Description	Actual Receipts	Actual Expenditures
Receipts:		
1996 Allocation	\$15,000	
Reimbursements from General Fund	0	
Expenditures:		
Narcotics and Vice Activity		10,345
Stolen Property Purchases		1,865
Canine Expenses		0
Other		0
Totals	\$15,000	\$12,210
Total Due To County Treasury	\$2,790	