

THOMAS E. FERGUSON

AUDITOR OF STATE

MANAGEMENT ADVISORY SERVICES

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MAS BULLETIN

THOMAS E. FERGUSON
Auditor of State

MAS8107.BUL
Circular No. 81-07
Page No. 1 of 6
Date 10-30-81

BUREAU OF INSPECTION AND SUPERVISION
OF PUBLIC OFFICES CIRCULAR

FURTHERANCE OF JUSTICE FUND

Section 325.12, R.C.
Section 325.071, R.C.

TO: ALL COUNTY PROSECUTORS
ALL COUNTY SHERIFFS
ALL COUNTY/TOWNSHIP STATE EXAMINERS
ALL COUNTY AUDITORS
ALL PRESIDENTS OF COUNTY COMMISSIONERS

THIS CIRCULAR SUPERSEDES CIRCULAR NO. 81-1 DATED MARCH 19, 1980, AND WILL BECOME EFFECTIVE JANUARY 1, 1982.

It has been brought to our attention that there is a need to clarify the position of the Bureau of Inspection and Supervision of Public Offices pertaining to the use of the Furtherance of Justice Funds and additionally to prescribe the necessary accounting procedures to be maintained. Accordingly, the following guidelines are hereby established:

1. The funds may not be used for personal expenses of the prosecutor, sheriff or employees of the prosecutor or sheriff. This is, of course, basic, but emphasis must still be placed on this point.
2. Monies in an F.O.J. fund may be used for any expenses incurred in the performance of official duties and in the furtherance of justice unless authority exists for the use of appropriated monies for such purpose and money is in fact available to the credit of a proper line--item account, appropriated and unencumbered.

The prosecuting attorney or sheriff is not required to request funds in his regular budget or at any, other time as a condition precedent to the use of F.O.J. funds and disapproval by the county commissioners is likewise not a condition precedent to the use of F.O.J. funds.

Circumstances may require that the expenditure be made from the F.O.J. fund prior to completion of the procedures necessary for the expenditure of appropriated and unencumbered monies. Under such circumstances the expenditure may be made from the F.O.J. fund and reimbursed from the normal appropriation account at a later date if monies are still available and unencumbered. The reimbursement expenditure from the appropriation account is subject to the requirements of Section 5705.41, Revised Code.

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3. The use of the funds must be documented and each expenditure itemized. Documentation of each expenditure would include but not be limited to a receipt, invoice, etc.
4. Expenses pertaining to authorized travel, whether lodging, mileage, meals and/or other incidental expenses shall be on the reimbursement basis.
 - A. If mileage is to be reimbursed it shall require a travel expense report showing the mileage from and to destination for each trip taken. "Side trips" are not reimbursable when it is for personal use and not on official business.
 - B. Documentation must be submitted for airline tickets, hotel or motel bills and other expenses connected to each trip.
 - C. Documentation will not be required for individual items of expense of less than \$1.00, or for items for which receipts are not practically available (tolls, parking, etc.).

THE OFFICER, MAY, IN HIS DISCRETION, ADVANCE TRAVEL EXPENSE FUNDS TO EMPLOYEES FROM THE F.O.J. FUND. ALL SUCH ADVANCEMENTS MUST BE ACCOUNTED FOR IN THE MANNER SET FORTH ABOVE, AND ANY UNUSED PORTIONS MUST BE PROMPTLY RETURNED TO THE F.O.J. ACCOUNT.

5. Equipment and Personal Property.
 - A. Such equipment or personal property purchased with F.O.J, funds becomes and remains the property of the county.
 - B. An inventory of such property shall be maintained and filed according to the provisions of Section 305.18, Revised Code.
6. Confidential Expenditures. (2)

It is recognized by the Bureau of Inspection and Supervision of Public Offices that prosecuting attorneys and the sheriffs will use F.O.J. funds for confidential expenditures. An expenditure is "confidential" if disclosure of the event or the identity of the recipient or of the nature of the expenditure would tend to frustrate the purpose for which it is made or would tend to expose any person to intimidation or danger of physical harm, to himself or his property.

The following methods (in addition to the Cash Book, Section 9) should be used for documentation of such expenditures:

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A. Purchases

Where practicable, each expenditure of F.O.J. funds for confidential purchases should be documented in accordance with the following (unless the procedures as set forth in Subsection D of this Section 6 are utilized):

1. When the case or investigation is finally concluded, an officer, employee or agent with firsthand knowledge of the necessary information shall furnish a report indicating, the item or items purchased, the date of the report, the date of the purchase, the amount expended, the check number, if applicable, the quantity and type of materials purchased, and the disposition thereof.
2. Where practicable, a separate check should be drawn for each transaction payable to the officer, employee or agent who will be making the actual purchase. If, for reasons of confidentiality, the check cannot be payable to the officer, employee or agent making the actual purchase, it should be made payable to a supervisory officer, who may cash the check and deliver the cash to the officer, employee or agent making the purchase. A signed receipt should be obtained at this time.
3. The report referred to in Subsection A(1) of this Section 6 must be signed by an officer, employee or agent with firsthand knowledge of the necessary information for the transaction and co-signed by the prosecuting attorney or sheriff.

B. Payments to Informants

Where practicable, and unless procedures as set forth in Subsection D of this Section 6 are utilized, a separate check should be drawn for each transaction payable to the officer, employee or agent making the actual payment. If, for reasons of confidentiality, the check cannot be made payable to the officer, employee or agent who will be making the actual payment, it should be made payable to a supervisory officer, who may cash the check and deliver the cash to the officer, employee or agent making the actual payment. A signed receipt should be obtained by the supervisory officer from the officer, employee or agent to whom cash is advanced.

C. Security

The extremely sensitive nature of the identity of informants and drug agents, the personal risk to such individuals, and the need for the

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expenditures is clear. Accordingly, to maintain the confidentiality of such expenditures, it is the policy of the Bureau of Inspection and Supervision of Public Offices that:

1. The identify of drug purchasers or informants shall never be included in any written notes, work papers or reports prepared by representatives of the Bureau of Inspection.
2. Documentation required in these Subsections B, C and D of Section 6 of expenditures will be reviewed only in the office of the prosecuting attorney or sheriff and will not be removed by the representatives of the Bureau of Inspection, unless there is probable cause to believe that illegal expenditures have taken place, in which case the Bureau of Inspection and Supervision of Public Offices may apply to the Common Pleas Court of the county in which the prosecuting attorney or sheriff serves for an order directing the prosecuting attorney or sheriff to deposit such documentation with the court for further review.
3. Any representative of the Bureau of Inspection who discloses the identity of drug agents or informants, other than under compulsion of legal process, shall be dismissed.

D. Affidavit

Sections 6A and 6B shall not apply where a prosecuting attorney or sheriff in the reasonable exercise of his discretion determines that maintenance of the prescribed documentation would increase the risk of exposure of any person to intimidation or danger of physical harm to himself or his property, or would frustrate the purpose for which a confidential expenditure is made. Where the prosecuting attorney or sheriff makes such a determination, he shall prepare an affidavit setting forth the amount of the expenditure and the check number, if any, related to the expenditure and the general nature of the expenditure (e.g., purchase, informant payment, maintenance expense or travel for undercover agent). If such an expenditure is, made from the imprest cash fund (Section 7), the receipt number should be substituted for the check number. When such an affidavit is furnished, the state examiner shall not require that the check or, the receipt or other details shall be produced and will make no further inquiry concerning that expenditure unless there is probable cause to believe the affidavit is false, In which case the Bureau of Inspection and Supervision of Public Offices may apply to the Common Pleas Court of the county in which the prosecuting attorney or sheriff serves for an order to compel disclosure of information supporting the expenditure. A sample affidavit is supplied as Exhibit A.

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7. Imprest Cash Fund

Many of the expenditures properly made from the F.O.J. fund are of such a nature that payments must be made in cash and it is impossible to process a check quickly enough to complete the transaction. Accordingly, the establishment of an Imprest Cash Fund may be authorized and administered in the following manner:

- A. The amount of the imprest cash fund must be formally established in the amount to be determined by the sheriff or prosecuting attorney.
- B. The monies in the imprest cash fund must be under the custody and control of a specific supervisory officer at all times. This officer must account for all cash placed in his custody or have properly completed receipts to account for the balance.
- C. Monies in the imprest cash fund may be expended only for confidential expenditures where the bank is not open to cash checks issued in the prescribed manner.
- D. When an officer or agent requests a cash advance from the imprest cash fund, he must give a dated signed receipt to the supervisory officer in charge of the Imprest cash fund. If any portion of the advance is subsequently returned to the fund, the amount returned should be noted on the original receipt and the notation should be signed and dated by the supervisory officer. A new receipt should be issued to the officer returning the funds.
- E. Where an expenditure is made from the imprest cash fund for a confidential purpose, it shall be documented in the manner provided in either Section 6A or 6D. An expenditure from the imprest cash fund for a payment to an informant shall be documented in the manner provided in Section 6D.

8. Receipts

All receipts should be prenumbered, duplicate receipts.

9. Accounting System

A short form ledger shall be maintained for the recording of all receipts and expenditures pertaining to F.O.J. funds. Such account shall be reconciled to the bank upon receipt of the bank statement and a copy of such

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shall be on file and submitted to the examiners upon request. The following is the recommended form to be used in recording the transactions pertaining to the F.O.J. fund:

(SEE ATTACHED EXHIBIT B)

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Charles E. Mauger, Deputy State Auditor

CEM/bb
Attachments - 2

ADDITIONAL, ADDED GUIDANCE:

- (1) City Council/Legislative Authority must authorize establishment of the F.O.J. fund by Ordinance, and set forth policies and procedures for use and accounting purposes. Those used herein may be utilized. City Council/Legislative Authority must appropriate the Local Governmental Entity money for the F.O.J. Fund from the General Fund. Do not use any Law Enforcement Trust Fund or Mandatory Drug Fine Money for the F.O.J. Fund unless specifically authorized by the Ohio Revised Code. Get a Legal Opinion in writing.
- (1) Use of a Purchase Order, or Requisition for undercover "drug buys" and etc. will suffice so long as adequate detail of the date and purpose of the use of the money is documented to a degree which will not disclose the identity of the law enforcement officer.

* * CAUTION * *

* * REMEMBER * *

** * * The OHIO Revised Code Section(s), and, or Attorney General Opinion(s), included with, or referenced by this MAS BULLETIN May Have Been CHANGED, and Thus May Be OUTDATED.*

** * * PRIOR to taking any action, CONSULT AN UP-TO-DATE CURRENT LEGISLATIVE SERVICE To Ensure Compliance With The OHIO REVISED CODE. * *
CONSULT YOUR LEGAL COUNSEL. * **

AFFIDAVIT

STATE OF OHIO)
) ss
COUNTY OF COOLIDGE)

A. Clovis Bencher, being first duly sworn, states that:

1. He is the duly elected and qualified Prosecuting Attorney of Coolidge County, Ohio;
2. In the performance of the official duties of his office and in the furtherance of justice, he has made expenditures of money received pursuant to Section 325.12, Revised Code, which expenditures are "confidential", within the meaning of that term as it is defined in Bureau Circular 81-007, Furtherance of Justice Funds, Section 6 (hereinafter "Circular")
3. He has determined, in the reasonable exercise of discretion, that maintenance of the prescribed documentation required by Sections 6A and 6B of the Circular would increase the risk of exposure of a person to intimidation or danger of physical harm to himself or his property, or would frustrate the purpose for which a confidential expenditure is made.
4. The amount, the check or receipt number, and the general purpose of such expenditures are set forth below:

| <u>Check or</u> | | <u>Amount</u> |
|-----------------------|----------|--|
| <u>Receipt No.</u> | | |
| <u>General Nature</u> | | |
| 713 | \$362.00 | Payment of travel expense for confidential investigation. |
| 278 | \$ 22.43 | Miscellaneous meal expense of informant in the course of confidential investigation. |

A. Clovis Bencher,
Prosecuting Attorney
Coolidge County, Ohio

Sworn to and subscribed before me this 23 day, of December, 19xx.

Betty Jones
Notary Public

