

County Veterans Service Office

Legal Precedents & Attorney General Opinions



January 2014

Introduction

The County Veterans Service Office Legal Precedents & Attorney General Opinions is intended to provide county veterans services offices with a list of legal precedents and Attorney General Opinions that are directly related to their responsibilities and day to day operations.

When using this document it is important to know the difference between a legal precedent and legal opinion. Legal precedent and legal opinion are easily confused and sometimes are erroneously interchanged. A description of each is provided below.

Legal Precedent. Legal precedent is an existing legal ruling. Legal precedent comes from past judicial decisions and cases. Precedent is binding, unless overturned by a higher court.

Legal Opinion. - Legal opinion is an interpretation of the law. Opinions are not legally binding although they may be of persuasive authority.

This reference guide, while containing legal information, is not intended as legal advice. Always refer to state and/or federal law and consult with your local prosecutor before implementing any action or change.

This document was developed through the collaborative efforts of the Ohio State Association of Veterans Service Commissioners, the Ohio State Association of County Veterans Service Officers, and the Ohio Department of Veterans Services. Recommendations for changes and comment may be forwarded to the Ohio Department of Veterans Service, 77 South High Street, 7th Floor, Columbus, Ohio 43215 or through either of the other creating partners.

Legal Precedents and Attorney Generals Opinions

The following is a list of frequently requested precedents and Attorney General Opinions. County Veteran Service Offices are reminded that the Attorney General's Opinions are only legal opinions. County Veteran Service Commissions should always consult with their local prosecutor regarding legal matters before taking any action. Complete copies of these and other legal opinions are available online at <http://www.ohioattorneygeneral.gov/About-AG/Organizational-Structure/Opinions.aspx>.

Legal Precedents

Subject	Case	Court	Citation/Case #
Funeral Protest	Shirley Phelps Roper v. Bob Taft	U.S. District Court, Northern District of Ohio, Eastern Division 2007	523 F.Supp.3d 312
Revision of the County Veterans Service Budget	Lynch <i>et al.</i> , Appellants v. Gallia County Board of Commissioners	Ohio Supreme Court 1997	79 Ohio St.3d 251
County Veteran Service Commissioner Appointment	State <i>ex rel.</i> Huron City Prosecutor v. Westerhold	Ohio Supreme Court 1995	72 Ohio St.3d 392
County Veteran Service Commissioner Appointment	State <i>ex rel.</i> Union County CVSC v. Parrott Judge	Ohio Supreme Court 2006	108 Ohio St. 3d 302, 843 N.E. 2d 750
County Veteran Service Commission Budget	State <i>ex rel.</i> Atkins v. Harrison Cty. Commrs.	Court of Appeals, Seventh District 2010	2010-Ohio-3160

Attorney General Opinions

Subject	Number	Date
Auditor Fees - A county auditor that assesses and collects fees from the revenues generated by the county general levy for current expenses within the 10-mill limitation under R.C. 319.54 may not collect fees from the portion of the county general levy for current expenses that is appropriated by the board of county commissioners to the veterans' service commission.	<u>2012-035</u>	10/17/2012
Burial Expenses - The requirement of R.C. 5901.32 that burial or cremation expenses incurred under R.C. 5901.25-.32 for indigent veterans and their family members be paid from the "county fund" refers to the county general fund and permits the expenses to be paid from any moneys in the county general fund that are available for this purpose. Amounts (up to .5 mil) that are levied for the county veterans service commission under R.C. 5705.05(E) and R.C. 5901.11 as part of the county general levy are included in the county general fund and may be used for indigent veterans burial assistance if budgeted and appropriated for this purpose.	<u>2008-033</u>	10/02/2008
Compatibility - A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a veterans' service commission within the same county. A person may not serve simultaneously as a member of a board of health of a combined general health district and member of a veterans' service commission within the same county.	<u>2011-029</u>	08/08/2011
Compatibility - A member of a veterans' service commission may serve simultaneously as a member of a county central committee of a political party or as a member of a county executive committee of a political party.	<u>2002-028</u>	11/12/2002
CVSC Appointment - So long as a former member of the armed forces of the United States served on active military duty and received an honorable discharge or honorable separation, he is eligible for appointment under R.C. 5901.02 as a member of a veterans service commission, whether or not such active military duty was for training purposes. (1990 Op. Attorney Gen. No. 90-049 (syllabus, paragraph one), limited due to statutory amendment.)	<u>2006-032</u>	07/24/2006

Subject	Number	Date
CVSC (Pay Raise) - Members of a county veterans' service commission are "officers" for purposes of Ohio Const. art. II, § 20. Therefore, a member of a veterans' service commission, who is holding office at the time the board of county commissioners increases the compensation for that position, is prohibited from receiving such increase for the duration of his term. The members of a county veterans' service commission, who are serving at the time the compensation for such position is increased by the board of county commissioners, may not receive such increase by resigning and being re-appointed to the commission by a judge of the common pleas court. They may receive such increase upon their reappointment to the commission only after the expiration of the term they were serving when the increase was adopted.	<u>2001-038</u>	09/05/2001
Employees (Hiring) - Requirement that a person employed by a county VSC be a qualified veteran, hiring procedures	<u>2004-034</u>	10/19/2004
Employees (Military Leave) - County employee's paid leave of absence each calendar year for service in the uniformed services	<u>2006-007</u>	03/13/2006
Employees (Salary, non-Union) - A board of county commissioners has no authority to fix the salary of a county employee for whom the power to fix compensation has been vested by the General Assembly in another county officer or entity.	<u>2008-012</u>	04/30/2008
Employees (Dual Role CVSO and Executive Director) - When a veterans service commission appoints an employee to a position that requires performance of administrative and managerial duties of an executive director, and also requires performance of duties of a county veterans service officer, the position is that of county veterans service officer acting as executive director and is in the classified civil service pursuant to R.C. 5901.07, regardless of the title the veterans service commission assigns to the position.	<u>1998-020</u>	06/16/1998
Financial Assistance – County Veterans' Service Office may not consider the dollar value of the Supplemental Nutrition Assistance Program (SNAP). CVSO may inquire whether a financial applicant is aware of SNAP.	<u>2013-007</u>	03/20/2013
Financial Assistance – Eligibility for assistance for individuals with active duty training only.	<u>2007-007</u>	04/27/2007

Subject	Number	Date
Financial Assistance - Financial assistance may not be used to pay tuition and expense for public or private schools or re-training	<u>1965-050</u>	04/1/1965
Financial Assistance - County veterans' service commission, medical statements	<u>1998-029</u>	08/24/1998
Financial Assistance – A veteran who has received a United States military discharge designated “General (under honorable conditions)” has been “honorably discharged” for purposes of RC Chapter 5901, and if otherwise qualified, is eligible for assistance from a veterans service commission.	<u>91-006</u>	01/11/1991
Financial Assistance - For purposes of R.C. 5901.08, which specifically concerns eligibility for veterans' assistance funds within a particular county, an incarcerated individual remains a resident of the county where he or she had a domicile prior to the incarceration and the individual is precluded from changing his or her domicile until released. Unless an individual has already established bona fide residence in a county before being incarcerated there, the time spent as a prisoner does not count toward the six month county residence requirement of R.C. 5901.08.	<u>1993-077</u>	12/30/1993
Financial Assistance - A veteran who has served two periods of active duty, the first period terminated by an honorable discharge, is eligible for soldiers' relief if the second period of service is terminated by a discharge, other than dishonorable, under which some Federal veteran benefits remain to him.	<u>71-056</u>	09/22/1971
Monuments and Cemeteries -Under R.C. 5901.37, the board of county commissioners is required to pay from the county general fund the expenses necessary to care for and properly preserve veterans monuments located in all cemeteries within the county, including private and township cemeteries and cemeteries located within municipal corporations.	<u>2008-027</u>	08/12/2008
Office Space - Board of county commissioners may not charge the county veterans service rent for the use of office space in a county building	<u>2012-019</u>	06/13/2012

Subject	Number	Date
Programs of Outreach - The type of program a veterans service commission has a duty to establish under R.C. 5901.03(E) is a program that makes a systematic attempt, working together with other agencies, to increase available services specifically to veterans within the county. A program founded by an agency or entity other than a veterans service commission is not a program established by a veterans service commission for purposes of R.C. 5901.03(E). Pursuant to R.C. 5901.03(E), however, a veterans service commission may establish a program in which it works with or coordinates its efforts with those of another agency in order to increase the availability of services to veterans within the county. R.C. 5901.03(E) does not authorize a veterans service commission to donate its funds to a veterans organization or any other agency.	<u>2001-033</u>	07/26/2001
Travel - Authority of county auditor to require itemized receipts for approval of employee's travel reimbursement requests	<u>2003-029</u>	09/18/2003
Veterans Courts – A veteran service commission may provide financial assistance to a veterans court. A veteran service commission may hire and compensate a person who will work at the veterans court.	<u>2011-047</u>	12/13/2011