

RECORD OF ORDINANCES

Dayton Legal Blank Co.

Form No. 30043

Ordinance No. 06-42-2002

Passed June 18, 2002
YEAR

AN ORDINANCE TO AUTHORIZE AND IMPLEMENT THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION AND THE CITY OF CIRCLEVILLE FOR THE POSITIONS OF SERGEANT, LIEUTENANT, AND COMMUNICATIONS SUPERVISOR AND DECLARING AN EMERGENCY.

WHEREAS, the City of Circleville and the Ohio Patrolmen's Benevolent Association have met and negotiated with the City of Circleville for a successor collective bargaining agreement regarding wages, benefits, terms and conditions of employment for the positions of Sergeant, Lieutenant and Communications Supervisor for the City Police Department; and

WHEREAS, through these negotiations, the City of Circleville and the Ohio Patrolmen's Benevolent Association have reached a tentative agreement concerning the outstanding issues; and

WHEREAS, pursuant to Ohio Revised Code Section 4117.10, the tentative agreement negotiated between the parties for a successor collective bargaining agreement has been presented to City Council for its consideration and approval;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Circleville, Pickaway County, Ohio, as follows:

SECTION I. That the Mayor is hereby authorized to enter into an agreement with the Ohio Patrolmen's Benevolent Association regarding wages, benefits, terms and conditions of employment for the positions of Sergeant, Lieutenant and Communications Supervisor for the City Police Department, a copy of which is attached hereto and made a part hereof as if fully rewritten herein.

SECTION II. That the terms of this agreement set forth all conditions and provisions relative to wages, benefits, terms and conditions of employment which the parties intend to bargain and agree during the life of this agreement.

SECTION III. That any ordinance, resolution, or part thereof pertaining to the subjects treated in this ordinance and which are inconsistent therewith be, and they hereby are, repealed to the extent so inconsistent.

SECTION IV. It is hereby bound and determined that all formal actions of this council concerning and relating to the passage of this ordinance were adopted in an open meeting of this council, and that all deliberations of this council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION V. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Circleville in that the adjustments in salaries and wages and the manner of the times of paying the same provided herein are urgently required to retain competent employees and properly conduct the business affairs of the City, so that this ordinance shall take effect and be in force immediately from and after its passage and approval by the Mayor.

PASSED: June 18, 2002

J. Bruce Bell Pres Term
PRESIDENT OF COUNCIL

ATTEST: Emda M. Chances
CLERK OF COUNCIL

APPROVED: June 18, 2002
DATE

Don W. Wack
MAYOR

APPROVED AS TO FORM:

Gary D. Kenworthy
GARY D. KENWORTHY
CIRCLEVILLE CITY LAW DIRECTOR

REVIEWED BY LAW DIRECTOR
FOR LEGALITY ONLY

EXHIBIT A

AGREEMENT

This agreement is entered into this date by and between the Pickaway County Commissioners, hereinafter called the "Commission", and the City of Circleville, Ohio, hereinafter called the "City".

WHEREAS, the City recognizes its responsibilities under the laws of the State of Ohio and of the United States of America to provide legal counsel to indigent persons charged with petty offenses and loss of liberty offenses pursuant to the Ohio Revised Code or Circleville City Ordinances in the Circleville Municipal Court, or in the Pickaway County Juvenile or Common Pleas Courts involving violations of Circleville City Ordinances; **and**

WHEREAS, the City in furtherance of the execution of its legal responsibilities, desires that the legal services be delivered to indigent citizens and others so situated appearing in the Circleville Municipal Court, Pickaway County Juvenile Court, or Pickaway County Common Pleas Court; **and**

WHEREAS, the Pickaway County Commissioners have previously entered into a written contract with the multi county branch of the Ohio Public Defender's Office to provide such legal representation to indigent defendants in all criminal cases arising in Pickaway County and in the appeals of right arising in Pickaway County; **and**

WHEREAS, this agreement has been authorized by Ordinance _____, passed by the Circleville City Council on _____, and by resolution passed by the Board of County Commissioners Journal No. _____, Page _____.

NOW, THEREFORE, in consideration of the mutual agreements, promises, and covenants hereinafter set forth, the parties hereto agree to bind themselves as follows:

1). The City shall pay to the Commission for its proportionate share of the legal representation provided to indigent defendants in the Circleville Municipal Court and indigent defendants relating to all violations of Circleville City Ordinances the sum of \$29,396.00 which is equal to one-third (1/3) of the amount actually paid by the Commission to the Ohio Public Defender's Office payable in four (4) quarterly installments of \$7,349.00 each payable to the Pickaway County Auditor's Office on July 1, 2002, October 1, 2002, January 15, 2003 and April 1, 2003.

2). In consideration of the above payment to the Commission by the City, the Commission agrees to provide to the City legal representation for all indigent defendants being prosecuted in the Circleville Municipal Court as well as all defendants being prosecuted for violations of Circleville City Ordinances in the Pickaway County Juvenile Court and Pickaway County Common Pleas Courts. This representation shall be in accordance with and under the same terms and conditions as set forth in the agreement entered into between the Commission and the multi-county branch of the Ohio Defender's Office.

3). The duration of this agreement shall be a period of twelve (12) months commencing on July 1, 2002 and terminating on June 30, 2003.

4). The Commission shall not assign all or any part of this agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

5). If the Commission shall fail to fulfill in reasonable, timely and proper manner, its obligations under this agreement, or if the Commission shall substantially violate any of the covenants, agreements, or stipulations of this agreement, the City shall thereupon have the right to terminate this agreement by giving written notice to the Commission of such termination and specifying an effective date therefore at least thirty (30) days before the effective date of said termination. Termination by the City shall not constitute a waiver of any other right or remedy it may have at law or in equity for breach of this agreement by the Commission.

6). Commission covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of services required under this agreement. No members of, nor delegates to, the Congress of the United States of America, and no resident commissioner shall serve in any part thereof or any benefits to arise here from.

7). The Commission shall have the same right to terminate this agreement as does the City, to-wit, by giving prior written notice to the City, stating the reasons for such termination and specifying an effective date therefore at least thirty (30) days hence.

8). In the event of the termination of this agreement by either party, then all obligations by the City to the Commission for payment of the installments set forth herein shall be suspended.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have hereunto set their hands on this _____ day of _____, 2001.

PICKAWAY COUNTY COMMISSIONERS

BY: _____
ULA JEAN METZLER

BY: _____
JOHN A. STEVENSON

BY: _____
ROBERT H. HUFFER

CITY OF CIRCLEVILLE

BY: _____
RON WUNSCH, MAYOR

BY: _____
GARY KENWORTHY
CIRCLEVILLE LAW DIRECTOR

**Office of the Ohio Public Defender**

8 East Long Street
Columbus, Ohio 43215-2998
(614) 466-5394
FAX NUMBER: (614) 644-9972

DAVID H. BODIKER
State Public Defender

May 16, 2002

Pickaway County Commissioners
139 W. Franklin St.
Circleville, Ohio 43113

RE: State Fiscal Year 2003 Public Defender Contract

Dear Commissions:

We are scheduled to meet at 1:30 p.m. on Monday, June 3, 2002 to discuss renewing our contract to provide public defender services in Pickaway County. Enclosed with this letter is a copy of the contract we are proposing for state fiscal year 2003, which covers the period of July 1, 2002 through June 30, 2003.

As you are probably well aware, the State is experiencing difficult times, financially. The Governor and State Legislature have reduced the budgets of most state programs, including the Ohio Public Defender's budget for supporting local indigent defense. You may recall that our contract for the current fiscal year (2002) originally provided for a state share of 47 percent and a county share of 53 percent. The cuts made to our budget subsequent to our signing the contract reduced the state share to 41 percent. However, by reducing overall costs, we were able to maintain the program without coming back to you for additional funds.

Unfortunately, we will not be able to maintain the program another year without an increase in the contract. For fiscal year 2003, because of the budget cuts and increasing costs, the estimated rate of state support will be only 40-41 percent, meaning a 59-60 percent share for the county. The contract we are proposing reflects this situation, and is for \$88,188, an increase of \$5,588 or about 6 3/4 percent over your fiscal year 2002 contract. All other terms remain the same as last year. We hope you will find this proposal acceptable, and we look forward to discussing it in more detail at our meeting.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. D. Alge".

John D. Alge
Director of Administration

**AGREEMENT TO PARTICIPATE IN THE MULTI-COUNTY BRANCH
OF THE OFFICE OF THE OHIO PUBLIC DEFENDER**

This agreement, hereby entered into between the parties, Office of the Ohio Public Defender (hereinafter the Contractor), and the Board of County Commissioners of Pickaway County (hereinafter the Contracting Authority) binds each to the terms, conditions, and restrictions set out below.

The following definitions shall apply in this agreement:

"Defendant" means any indigent person being prosecuted by the state in a felony, misdemeanor, or juvenile Court case.

"Contractor's attorneys" means those attorneys employed by the Contractor pursuant to Paragraph VI, clause 1 of this agreement.

"Multi-county region" means the geographic area encompassed by all of the counties that are contractual participants in the Multi-County Branch of the Office of the Ohio Public Defender.

"Ethical conflict" means any conflict of interest or appearance of impropriety which violates the provisions of the Ohio Code of Professional Responsibility, the laws of this state, or the federal constitution.

I. Scope Of The Contract And Compensation

1. The Contractor agrees to provide legal representation in the Court having original jurisdiction in 100 percent of the felony, misdemeanor, and juvenile cases arising in Pickaway County on or after the commencement date and during the term of this agreement in which the defendant is indigent, and in the appeals of right in 100 percent of the felony cases, and in those misdemeanor and juvenile cases wherein the Contractor determines that an appeal is necessary and which arise on or after the commencement date and during the term of this agreement, subject to the restrictions enumerated below, in exchange for the sum of \$88,188.00 (hereinafter the Contract Amount).

2. The Contract Amount shall be paid in four (4) equal installments of \$22,047.00 due July 1, 2002, October 1, 2002, January 15, 2003, and April 1, 2003.

3. The Contract Amount is based on the estimated funding level to be appropriated by the Ohio Legislature for fiscal year 2003 and an estimated statewide rate of 41 percent for reimbursement of county level indigent defense systems for fiscal year 2003. If the funding level or estimated rate of reimbursement should change during the term of this contract, the Contract Amount and any remaining quarterly payments shall be adjusted to reflect the new funding level and statewide percentage rate of reimbursement.

II. Restrictions

Representation provided by the Contractor shall be limited as follows:

1. **Cases Involving Multiple Defendants.** The Contractor will provide legal representation for as many defendants charged with crimes arising from the same act, transaction, or course of events as can be represented without ethical conflict by the Contractor's attorneys. If there are more defendants than the Contractor can represent in such a case, the Contracting Authority shall compensate counsel appointed by the Court having jurisdiction of the case to represent the defendants not represented by the Contractor and shall be reimbursed by the Contractor pursuant to Ohio Revised Code Section 120.33.

2. **Juvenile Cases.** The Contractor shall not provide representation as a guardian ad litem nor in juvenile custody cases, nor in non-support contempt cases arising in either the General or Juvenile Division of Common Pleas Court. The Contractor shall represent juveniles charged under R.C. 2151.02 (Delinquent Child), R.C. 2151.021 (Juvenile Traffic Offender), and R.C. 2151.022 (Unruly Child), and shall represent either the parent or the juvenile in cases arising under R.C. 2151.03 (Neglected Child), R.C. 2151.031 (Abused Child), R.C. 2151.04 (Dependent Child), and R.C. 2151.05 (Child Without Proper Parental Care). The Contractor shall not represent a parent and child from the same family in the same or conflicting actions. When a guardian ad litem is required, when a parent and child need representation in the same or conflicting actions, when there are more persons needing representation in one of the above listed juvenile matters than the Contractor's attorneys can represent without ethical conflict, or when any other ethical conflict exists, the Contracting Authority shall compensate counsel appointed by the Court having jurisdiction of the case and shall be reimbursed by the Contractor pursuant to Ohio Revised Code Section 120.33.

3. **Death Penalty Cases.** The Contractor will not provide trial counsel in capital cases arising in Pickaway County. Contractor agrees to provide criminal investigative services in all capital cases arising in Pickaway County if the trial counsel appointed by the Court are on a list of Rule 20 qualified attorneys approved by the Ohio Public Defender. Contracting Authority will be responsible for compensating mitigation investigators, psychologists, and any other experts necessary for the adequate defense of the client.

In trial level capital cases, the Contracting Authority shall compensate counsel appointed by the Court having jurisdiction over the case for legal representation and expert services and shall be reimbursed up to 50 percent of the total cost of that compensation by the Contractor pursuant to Ohio Revised Code Sections 120.33 and/or 120.35, or the contractor may, at the option of the court and the contractor, be appointed to a case pursuant to Ohio Revised Code Section 120.06(A). If the contractor is appointed to the case pursuant to Ohio Revised Code Section 120.06(A), the contractor shall bill the contracting authority and the contracting authority shall pay 50 percent of cost of the representation pursuant to Ohio Revised Code Section 120.06(D). Such payment(s) shall not reduce the contract amount set forth in Section I.1 of this agreement.

If Contractor is precluded from providing criminal investigative services because of an ethical conflict, the Contracting Authority may compensate criminal investigative experts and shall be reimbursed up to 50 percent of the total cost of that compensation by the Contractor pursuant to Ohio Revised Code Sections 120.33 and/or 120.35.

4. **Conflicts.** In any case covered by this agreement where an ethical conflict precludes the Contractor from providing representation, the Contracting Authority shall compensate counsel appointed by the Court having jurisdiction of the case for legal representation and shall be reimbursed by the Contractor pursuant to Ohio Revised Code Sections 120.33 and/or 120.35.

5. **Caseload Restrictions.** In the event of an unexpected increase in the number of cases covered by this agreement, the Contractor will not provide representation when the increased caseload would result in ineffective legal representation. When caseload restrictions preclude representation by the Contractor, the Contracting Authority shall compensate counsel appointed by the Court having jurisdiction of the case for legal representation and shall be reimbursed by the Contractor pursuant to Ohio Revised Code Sections 120.33 and/or 120.35.

6. **Competency/Not Guilty by Reason of Insanity (NGRI) Evaluations.** For cases in the Common Pleas Court of Pickaway County where a competency or NGRI evaluation is required, the Court shall first exhaust the resources of the designated certified forensic center designated by the Ohio Department of Mental Health and funded by the Ohio Department of Mental Health Office of Forensic Services prior to requiring the Contractor to employ an expert to determine the competency or sanity of a client.

III. **Determination Of Indigency/Client Eligibility**

Indigency and client eligibility for representation under this agreement shall be determined by the Contractor under the terms of Ohio Revised Code Section 120.05 and the Ohio Public Defender Commission Administrative Rule 120-1-03.

IV. **Term Of Contract**

1. The term of this agreement shall be July 1, 2002 to June 30, 2003.
2. Upon termination of this agreement, whether by cancellation or expiration, the Contractor agrees to complete any and all cases commenced under the terms of this agreement under the existing reimbursement schedule for indigent representation in Pickaway County. Representation commenced in the trial court shall be continued through all trial court proceedings. Representation commenced in or taken to an appeals court by the Contractor shall be continued until the appeals process is terminated by an action final on the merits in that appellate court.
3. Nothing in this provision prohibits the Contractor from withdrawing from a case due to a conflict of interest or due to a finding that the client is financially ineligible for services.

V. **Cancellation**

1. This agreement may be canceled without cause by either party upon delivery by Certified Mail of written notice of cancellation.
2. This agreement is automatically canceled, without requirement of notice, if any payment required by Paragraph I of this agreement is not made within three (3) business days of the date on which it is due.

VI. Representation And Services

1. The Contractor agrees to employ assistant state public defenders and/or to subcontract with attorneys to provide legal representation in all cases within Pickaway County as specified in this agreement.

2. In cases where legal representation is provided under the terms of this contract, the Contractor has sole discretion to allocate cases either to assistant state public defenders or to contract attorneys.

3. The Contractor agrees to maintain a support staff sufficient for the number of attorneys employed.

4. The Contractor agrees to obtain necessary expert and forensic assistance for defense of the cases covered under the terms of this agreement.

5. The Contractor agrees to provide research and education assistance to the Contractor's attorneys including access to computer assisted research, the Ohio Public Defender Commission Brief Bank, and continuing legal education training within the State of Ohio not to exceed twelve (12) hours of criminal defense training per year.

6. The Contracting Authority agrees that the Contractor has sole discretion and responsibility for choosing and employing all personnel covered by this contract and further agrees that the Contracting Authority will in no way interfere with the Contractor's discretion in these matters.

7. The parties agree that the procedure for and cost of obtaining transcripts is not affected by this agreement. Transcripts will continue to be obtained and paid for as prescribed under Ohio Revised Code Sections 120.33 and/or 120.35.

VII. Reimbursement Waived

The Contracting Authority agrees that it will receive no reimbursement from the Contractor for the costs of providing legal representation in any legal proceeding not covered by this agreement except in cases where it is necessary to compensate court appointed counsel in the circumstances set out in this agreement.

VIII. Contingencies

1. This contract has no force or effect unless and until it is approved by the Ohio Public Defender.
2. This contract shall have no force or effect until the Director of the Office of Budget and Management certifies that there is a balance in the Ohio Public Defender budget sufficient to cover the contract amount and projected expenses which is not already obligated to pay existing debts. Ohio Revised Code Section 126.07.

IX. Amendment

1. This contract may not be amended orally.
2. This contract may be amended only by written addendum, signed and executed by the parties named herein, or their successors.

David H. Bodiker 4/3/02
DAVID H. BODIKER Date
For Contractor

J. C. Thompson 6-3-02
County Commissioner Date
Contracting Authority

Alan Metzler 6-3-02
County Commissioner Date
Contracting Authority

Robert H. Huffer 6/3/02
County Commissioner Date
Contracting Authority