

September 6, 2002

The Honorable Richard D. Welch
Morgan County Prosecuting Attorney
109 East Main Street
McConnelsville, Ohio 43756-1125

SYLLABUS:

2002-024

1. R.C. 307.05 prohibits a board of county commissioners from awarding a contract for ambulance services to a nonprofit corporation that “receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county,” R.C. 307.05, unless the contract has been competitively bid and such nonprofit corporation was the lowest and best bidder.
2. R.C. 307.05 does not require that a contract for ambulance services with a nonprofit corporation not of the type described in that statute be competitively bid. If such a contract is for an amount in excess of fifteen thousand dollars, however, it must be competitively bid in accordance with R.C. 307.86, whether or not the nonprofit corporation with which the county contemplates contracting is of the type described in R.C. 307.05.

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OPINION NO. 2002-024

The Honorable Richard D. Welch
Morgan County Prosecuting Attorney
109 East Main Street
McConnelsville, Ohio 43756-1125

Dear Prosecutor Welch:

You have submitted an opinion request in which you ask whether a county must competitively bid a contract for ambulance services under R.C. 307.05. By way of background, your letter states that, “in Morgan County there is only one entity that historically has ever bid for the ambulance service contract and/or is capable of providing those services to the county.” You further state that the entity you describe is a nonprofit corporation with which the county has previously contracted for ambulance service. Your concern appears to be whether the limited availability of ambulance service providers in Morgan County, as well as the county’s past practice of contracting with a particular nonprofit entity for the provision of such service, relieves the county of any obligation it may have to procure such service through competitive bidding.

We begin by noting that, “[c]ounties ... may exercise only those powers affirmatively granted by the General Assembly.” *Geauga County Bd. of Comm’rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696, 699 (1993). Thus, whether the county commissioners must competitively bid a contract with a nonprofit corporation for ambulance services under R.C. 307.05 depends upon whether the county is required by statute to so bid the contract.

Let us first examine the general statutory competitive bidding requirements applicable to county purchases established by R.C. 307.86, which states in pertinent part:¹

¹ See generally R.C. 9.312(C) (“[a] municipal corporation, township, school district, board of county commissioners, any other county board or commission, or any other political subdivision required by law to award contracts by competitive bidding may by ordinance or

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county or contracting authority, as defined in [R.C. 307.92],² at a cost in excess of fifteen thousand dollars, except as otherwise provided in [R.C. 713.23(D) and in R.C. 125.04, R.C. 307.022, R.C. 307.041, R.C. 307.861, R.C. 339.05, R.C. 340.03, R.C. 340.033, R.C. 4115.31-.35, R.C. 5119.16, R.C. 5513.01, R.C. 5543.19, R.C. 5713.01, and R.C. 6137.05],³ shall be obtained through competitive bidding. (Emphasis and footnotes added.)

With numerous exceptions described therein, R.C. 307.86 establishes the general rule that anything to be purchased, including services, by or on behalf of the county or contracting authority at a cost in excess of fifteen thousand dollars “shall be obtained through competitive bidding.” The General Assembly’s use of the word “shall” in the foregoing sentence indicates that the use of competitive bidding for the purchases described therein is mandatory. *See Sentinel Security Systems v. Medkeff*, 36 Ohio App. 3d 86, 521 N.E.2d 7 (Summit County 1987) (syllabus) (stating in part, “[u]nder R.C. 307.86, any contracting authority for a county is obligated to receive competitive bids on any service contract which exceeds the dollar value

resolution adopt a policy of requiring each competitively bid contract it awards to be awarded to the lowest responsive and responsible bidder in accordance with this section”).

² *See generally* R.C. 307.92 (“[a]s used in [R.C. 307.86-.91], ‘contracting authority’ means any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof”).

³ *See* R.C. 125.04 (purchases by the Department of Administrative Services on behalf of, among others, counties); R.C. 307.022 (lease of correctional facility without competitive bidding); R.C. 307.041 (county purchases of energy conservation measures); R.C. 307.861 (renewal of certain leases entered into for electronic data processing equipment, services, or systems, or a radio communications system); R.C. 339.05 (county hospital bidding procedures); R.C. 340.03(A)(8) (contracts for community mental health services); R.C. 340.033 (contracts for alcohol, drug addiction, and mental health services); R.C. 713.23(D) (purchases by a regional planning commission on behalf of political subdivisions); R.C. 4115.31-.35 (purchases of goods and services provided by persons with severe disabilities); R.C. 5119.16 (provision of certain goods and services through the Department of Mental Health); R.C. 5513.01 (participation with the Director of Transportation in certain contracts); R.C. 5543.19 (county engineer’s performance of certain duties by force account); R.C. 5713.01 (employment of an expert appraiser for the assessment of property); and R.C. 6137.05 (repair or maintenance of certain improvements paid from maintenance fund created by R.C. 6137.01).

specified in the statute”). *See generally Department of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368, 370 (1992) (“[i]t is axiomatic that when it is used in a statute, the word ‘shall’ denotes that compliance with the commands of that statute is *mandatory*”).⁴

According to your letter, the county commissioners contemplate purchasing ambulance services under R.C. 307.05 from a nonprofit corporation. We must, therefore, examine the specific provisions of R.C. 307.05, as well. Pursuant to R.C. 307.05,⁵ there are various methods

⁴ In addition to exceptions for purchases made in accordance with the statutes enumerated therein, *see generally* note three, *supra*, R.C. 307.86 also includes various categories of purchases that are excepted from the competitive bidding requirements of that statute. For example, R.C. 307.86(A) establishes an exception for certain purchases made in “a real and present emergency.” Other exceptions to the competitive bidding requirements of R.C. 307.86 apply to purchases of particular types. *See, e.g.*, R.C. 307.86 (services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser); R.C. 307.86(B) (“supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county, and the only source of supply for the supplies, part, or parts is limited to a single supplier”); R.C. 307.86(K) (purchases “made by a public children services agency pursuant to [R.C. 307.92 or R.C. 5153.16] and consist[ing] of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children”). Yet other exceptions are prescribed for purchases made from particular suppliers. *See, e.g.*, R.C. 307.86(C) (purchases from “the federal government, the state, another county or contracting authority of another county, or a board of education, township, or municipal corporation”). In addition, certain exceptions are defined by both the nature of the purchase and the identity of the supplier. *See, e.g.*, R.C. 307.86(E) (criminal justice services, social services programs, family services, or workforce development activities purchased by a board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants).

⁵ R.C. 307.05 states, in pertinent part:

A board of county commissioners may operate an ambulance service organization or emergency medical service organization, or, in counties with a population of forty thousand or less, may operate a nonemergency patient transport service organization, or may enter into a contract with one or more counties, townships, municipal corporations, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners are located within or without the state, in order to furnish or obtain the services of ambulance service

by which a board of county commissioners may provide for ambulance, emergency medical services and, in less populous counties, non-emergency patient transport services. Among the options available to a board of county commissioners is the provision of such services pursuant to contract with “one or more counties, townships, municipal corporations, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners.” Thus, R.C. 307.05 authorizes a county to contract with a nonprofit corporation for the provision of ambulance services.

A county’s authority to contract under R.C. 307.05 with a nonprofit corporation is limited, however, as follows:

Such contracts shall not be entered into with a public agency or *nonprofit corporation* that receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county unless the public agency or nonprofit corporation is awarded the contract after *submitting the lowest and best bid to the board of county commissioners.* (Emphasis added.)

Thus, a county may not award a contract thereunder to a nonprofit corporation that “receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county,” R.C. 307.05, unless that entity submitted the lowest and best bid on the contract. R.C. 307.05 does not, however, similarly limit the authority of a county to contract with a nonprofit corporation that is not of the type described therein, *i.e.*, if the nonprofit corporation is not competing as described in R.C. 307.05, the prohibition against awarding the contract without competitive bidding does not apply. *See generally State ex rel. Bohan v. Industrial Commission*, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946) (instead of disregarding words in a statute as mere surplusage and meaningless, a court has a duty “to accord meaning to each word of a

organizations, to furnish or obtain additional services from ambulance service organizations in times of emergency, to furnish or obtain the services of emergency medical service organizations, or, in counties with a population of forty thousand or less, to furnish or obtain services of nonemergency patient transport service organizations, or may enter into a contract with any such entity to furnish or obtain the interchange of services from ambulance or emergency medical service organizations, or, within counties with a population of forty thousand or less, to furnish or obtain the interchange of services from nonemergency patient transport service organizations, within the territories of the contracting subdivisions.

[legislative] enactment if it is reasonably possible to do so. It is to be presumed that each word in a statute was placed there for a purpose”).

Your question may have arisen, in part, from perceived inconsistencies between the competitive bidding requirements of R.C. 307.86 and R.C. 307.05. For example, although R.C. 307.86 does not require a purchase at a cost of fifteen thousand dollars or less to be competitively bid, R.C. 307.05 prohibits the award of a contract thereunder, regardless of the amount of the contract, to a nonprofit corporation or a public agency “that receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county,” unless that corporation or agency has submitted the lowest and best bid on the contract. In reconciling this apparent consistency, we must bear in mind the well-settled principle of statutory construction that, “[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both.” R.C. 1.51. In accordance with this rule, both R.C. 307.05 and R.C. 307.86 may be given effect if the county engages in competitive bidding whenever required by either statute. Thus, even if a contract under R.C. 307.05 is for an amount under fifteen thousand dollars, it may not be awarded to one of the specified nonprofit corporations or public agencies unless that corporation or entity has submitted the lowest and best bid.⁶

You have not indicated whether the particular nonprofit corporation with which the county contemplates contracting “receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county,” R.C. 307.05. If it is such a nonprofit corporation, R.C. 307.05 prohibits the county from awarding a contract thereunder to that entity unless, through the competitive bidding process, that entity has submitted the lowest and best bid. Additionally, R.C. 307.86 requires, if the contract for the purchase of ambulance services is valued at more than fifteen thousand dollars, regardless of the nature of the entity that may

⁶ Another apparent inconsistency arises between the provisions of R.C. 307.86(C) and R.C. 307.05. Pursuant to R.C. 307.86(C), a county need not competitively bid a contract if the purchase is from, among others, another county or contracting authority of another county, a township, or municipal corporation, all entities with which a county may contract for the provision of ambulance services under R.C. 307.05. If any of such entities “receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county,” however, R.C. 307.05 prohibits the county from awarding the contract to such entity, unless that entity has submitted the lowest and best bid on the contract. Again, the specific competitive bidding requirements of R.C. 307.05 prevail over the general requirements of R.C. 307.86.

ultimately be awarded the contract, with certain exceptions,⁷ that the contract be competitively bid.

Your particular concern is whether there is an exception to the competitive bidding requirements of R.C. 307.05 or R.C. 307.86 in the event that the nonprofit corporation with which the county contemplates contracting is the only “entity that historically has ever bid for the ambulance service contract and/or is capable of providing those services to the county.” We note first that neither R.C. 307.86 nor R.C. 307.05 establishes an exception from its competitive bidding requirements for situations in which there may be only a limited number of prospective bidders or where the county has previously contracted with a particular entity. As stated in *Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969, 972 (1910), “an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience.” Thus, we conclude that the General Assembly intended no such exception. In addition, R.C. 307.05 expressly prohibits a county from awarding a contract to, among others, a nonprofit corporation of the type described therein, unless that nonprofit corporation, through the competitive bidding process, has submitted the lowest and best bid.

Accordingly, in order to contract under R.C. 307.05 with a nonprofit corporation that “receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county,” R.C. 307.05, a county must competitively bid the contract, and the nonprofit corporation must have submitted the lowest and best bid on the contract. Alternatively, if the county contemplates entering into a contract under R.C. 307.05 with a nonprofit corporation other than one described in that statute, and if that contract is for more than fifteen thousand dollars, R.C. 307.86 requires the county to competitively bid such contract. In addition, should the latter contract be for an amount less than fifteen thousand dollars, neither R.C. 307.05 nor R.C. 307.86 requires such contract to be competitively bid.

Based upon the foregoing, it is my advice and you are hereby advised that:

1. R.C. 307.05 prohibits a board of county commissioners from awarding a contract for ambulance services to a nonprofit corporation that “receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service

⁷ One such exception may arise under R.C. 307.86(C) if the purchase is made from a county, township, or municipal corporation that does not receive “more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance service organizations, nonemergency patient transport service organizations, or emergency medical service organizations in the county.” In such a case, neither R.C. 307.86 nor R.C. 307.05 requires that contract to be competitively bid.

organizations, or emergency medical service organizations in the county,” R.C. 307.05, unless the contract has been competitively bid and such nonprofit corporation was the lowest and best bidder.

2. R.C. 307.05 does not require that a contract for ambulance services with a nonprofit corporation not of the type described in that statute be competitively bid. If such a contract is for an amount in excess of fifteen thousand dollars, however, it must be competitively bid in accordance with R.C. 307.86, whether or not the nonprofit corporation with which the county contemplates contracting is of the type described in R.C. 307.05.

Respectfully,

BETTY D. MONTGOMERY
Attorney General