December 20, 1993

OPINION NO. 93-056

The Honorable Stephanie Tubbs Jones
Cuyahoga County Prosecuting Attorney
Courts Tower, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

Dear Prosecutor Jones:

You have requested an opinion regarding the authority of a board of county commissioners to receive gifts of money to operate a student loan program for student nurses that is used to recruit nurses to work at local hospitals. Your letter describes the proposed program as follows:

> [T]he nursing schools of two local universities wish to establish loan programs for student nurses enrolled in their programs. Local hospitals would provide funds to the schools, which would then give the money to the Board of County Commissioners, which in turn would lend the money to a student. The student would agree to work for one of the local hospitals for a designated period of time after graduation, and would pay the loan back during that period of employment.

You have indicated that the reason that the universities want the board of county commissioners to operate the student loan program rather than the universities themselves is to obtain more favorable income tax consequences for the loan recipients.[1]

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[1] 26 U.S.C.S. §108(f) (1992) provides, in relevant part, as follows:

> (1) IN GENERAL. In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.
> (2) STUDENT LOAN. For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by-
> (A) the United States, or an instrumentality or agency thereof,

A Board of County Commissioners Has No Statutory Authority to Operate a Student Loan Program

As a creature of statute, a board of county commissioners possesses only the authority expressly conferred by statute and the authority that may be inferred therefrom as reasonably necessary to make the express powers effective. *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917). There is no express statutory authority for a board of county commissioners to operate any type of student loan program, regardless of the source of the funds involved. Thus, whether a board of county commissioners may accept gifts for the purpose of operating a student loan program for nursing students depends upon whether the statutory authority expressly conferred upon the board to accept gifts necessarily implies the power to use those gifts for this purpose.

A Board of County Commissioners May Not Accept a Gift of Money Pursuant to R.C. 307.22 for the Purpose of Making Loans to Students that Will Aid Hospitals in Recruiting Employees

There are two statutes that authorize a board of county commissioners to accept gifts and bequests for educational purposes, R.C. 307.22 and R.C. 9.20. R.C. 307.22, which specifically concerns gifts for educational purposes, provides as follows:

> The board of county commissioners may receive bequests, donations, and gifts of real and personal property and money to promote and advance the cause of education in the county. All property and money so received by the board, or which has been bequeathed and bestowed upon such board and remains undisposed of, may be paid to any incorporated institution of learning in the county, or a part may be used each year to defray the expenses of the teachers institute, upon such terms as the board prescribes, having reference to the terms of the trust and safety of the fund and its proper application.

The bequests, donations, and gifts that a board of county commissioners may receive pursuant to R.C. 307.22 are limited to those "to promote and advance the cause of education in the county." Whether any particular gift is received to promote and advance the cause of education is a question of fact. Your letter, however, expressly states that the purpose underlying the gift to the board of county commissioners is that of "attracting professional nurses to work in the community surrounding the jurisdiction of [the board of county commissioners]." You have explained that in

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(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof[.]

return for receiving the loan as a student, an individual would be obligated to work in one of the local hospitals for a period of time following graduation. The individual, by fulfilling this employment requirement, would receive a discharge of the loan. The local hospitals, therefore, seek to use the loan program to recruit employees. In addition, if the loan is made by the county, the amount of the loan that is discharged might be exempt from federal income taxation. *See* note 1, *supra*. Although the loan program you have described could incidentally promote the cause of education in the county, that clearly is not the principal reason why the gift would be made to and received by the county commissioners. R.C. 307.22, therefore, is not applicable.

A Board of County Commissioners May Not Accept a Gift of Money Pursuant to R.C. 9.20 for The Purpose of Making Loans to Students that Will Aid Hospitals in Recruiting Employees

R.C. 9.20 is a general statute, not limited to gifts for educational purposes, that applies to the state and counties, townships, municipal corporations, cemetery associations, and to benevolent, educational, penal or reformatory institutions, wholly or in part under the control of the state. The purpose for which a board of county commissioners may receive gifts pursuant to this section is "for [its] benefit or the benefit of any of those under [its] charge." R.C. 9.20. Clearly, a gift of funds from a university to the board of county commissioners for student loans as you have described is not for the benefit of the board of county commissioners. Additionally, such a gift is not for the benefit "of any of those under [its] charge." The funds at issue are to be used to make student loans to nursing students at particular universities. The benefit to be derived from the money will be enjoyed by the individual students who receive the loans, or perhaps by the hospitals who are thus enabled to recruit employees. These students and hospitals are not "under the charge of" the board of county commissioners. In *Christy v. Commissioners of Ashtabula County*, 41 Ohio St. 711 (1885), the court construed the term "those under their charge" as the term was used in R.S. 20, which was, in relevant part, the same as R.C. 9.20.[2] With respect to a board of county commissioners, the court said as follows:

> The only designated representative of that part of the people of the state which inhabits and constitutes a county, is the board of county commissioners. That board has no "charge" of persons. It has charge of certain county property and manages

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[2] R.S. 20 read, in relevant part, as follows:

> The...county commissioners...shall be capable of receiving by gift, devise, or bequest money, lands, or other properties, for their benefit, or the benefit...of any of those under their charge, and to hold and apply the same according to the terms and conditions of the gift, devise, or bequest; but this section shall not be held to affect or change the statutory provisions as to devises or bequests for such purposes.

1881 Ohio Laws 109 (H.B. 579, eff. April 8, 1881).

> such business of the county...as has been committed to it by statute. The *persons*, whose interests are under the charge of these commissioners are the people of the county....[T]he board of county commissioners does not represent the several interests of the persons who inhabit the county. It does represent many property interests of those persons as an aggregate.

41 Ohio St. at 714 (emphasis in original). Thus, R.C. 9.20 does not permit a board of county commissioners to accept a gift for the benefit of particular individuals.

The Terms of a Gift to the Board of County Commissioners Cannot Enlarge the Authority of the Board

Even if the gift of money to the board of county commissioners for the operation of a student loan program for nursing students were thought to benefit the people of the county as a whole, the board of county commissioners could not for that reason alone assume authority to operate a student loan program. The authority of the board of county commissioners to implement a gift pursuant to R.C. 9.20 is limited by the statutory authority that the board otherwise possesses. The terms of a gift to a board of county commissioners cannot enlarge that statutory authority. *See, e.g.*, 1957 Op. Att'y Gen. No. 1150, p. 545 at 550 ("in general it would seem that the authority of governmental agencies to administer property according to the terms of gifts, devises or bequests is primarily limited by the scope of the functions, powers and duties of those agencies"); *see also* 1982 Op. Att'y Gen. No. 82-086. To construe R.C. 9.20 otherwise essentially would be to permit a private entity to expand the powers of the board of county commissioners merely by making a gift of real or personal property to the board for purposes beyond the statutory authority of the board. Since that construction of R.C. 9.20 yields an unreasonable result, it must be rejected. *See generally State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985). Thus, a board of county commissioners has no authority pursuant to R.C. 9.20 to accept a gift of money to operate a student loan program for nursing students.[3]

Conclusion

On the basis of the foregoing analysis, it is my opinion, and you are hereby advised, that a

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[3] You might wish to consider whether the same purposes you describe might be achieved by working through the Ohio Student Aid Commission. Recent legislation orders the Commission to "establish the nurse education assistance program, the purpose of which shall be to make loans to students enrolled in prelicensure nurse education programs at institutions approved by the board of nursing under [R.C. 4723.06] and postlicensure nurse education programs approved by the board of regents under [R.C. 3333.04] or offered by an institution holding a certificate of authorization issued by the board of regents under [R.C. Chapter 1713]." R.C. 3351.16. In addition, the Commission is expressly authorized to accept "gifts, grants, bequests, devises, or loans" for these purposes. R.C. 3351.07(A)(2).

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Respectfully,

LEE FISHER
Attorney General

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SYLLABUS: 93-056

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