December 21, 1993

OPINION NO. 93-065

The Honorable Gregory J. Brown
Ashtabula County Prosecuting Attorney
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, Ohio 44047-1092

Dear Prosecutor Brown:

You have requested an opinion concerning the applicability of competitive bidding requirements to the transactions of a veterans service commission. Although you did not specify any particular sections of the Revised Code among the many that prescribe competitive bidding, all of these sections, with the exception of R.C. 307.86, are clearly inapplicable to contracts of a veterans service commission.[1] Accordingly, this opinion is limited to an analysis of the applicability of R.C. 307.86 to the contracts of a veterans service commission.

The Competitive Bidding Requirements of R.C. 307.86 Apply to the County and to a "Contracting Authority" As Defined in R.C. 307.92

R.C. 307.86 provides, in pertinent part, as follows:

> 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,

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[1] R.C. 125.51 (department of administrative services); R.C. 127.16 (state agencies); R.C. 152.18 (Ohio building authority); R.C. 153.08 (state buildings); R.C. 307.02 (board of county commissioners); R.C. 307.10 (board of county commissioners); R.C. 511.12 (board of township trustees); R.C. 735.05 (municipal corporations); R.C. 3313.46 (boards of education); R.C. 3318.10 (board of education); R.C. 3375.41 (board of library trustees); R.C. 5525.01 (director of transportation); R.C. 5537.13 (Ohio turnpike commission); R.C. 5575.01 (board of township trustees).

> construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding.[2]

Thus, the county and "contracting authorities" are subject to R.C. 307.86 for purchases or leases, with certain express exceptions, exceeding a cost of $10,000. "Contracting authority" is defined by R.C. 307.92 as "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." Therefore, whether R.C. 307.86 applies to the transactions of a veterans service commission depends upon whether a veterans service commission is a county agency with the authority to enter into contracts on behalf of itself or the county.

A Veterans Service Commission Is A County Agency

Although there is no comprehensive test for determining whether an entity is an agency, board, commission, or authority of the county, prior Attorney General opinions have reasoned that an entity is a county board if it is "essentially a subdivision of the county or a subordinate department of the county." 1961 Op. Att'y Gen. No. 2383, p. 366 at 369; *see also* 1992 Op. Att'y Gen. No. 92-060. In order to determine whether an entity is essentially a subdivision or subordinate department of the county, Attorney General opinions have examined the following factors: (1) whether the territory that comprises the entity is coextensive with the territorial limits of the county, Op. No. 92-060; 1989 Op. Att'y Gen. No. 89-102; 1983 Op. Att'y Gen. No. 83-064; (2) whether the county is responsible for the organization and supervision of the entity, Op. No. 92-060; 1989 Op. Att'y Gen. No. 89-001; 1984 Op. Att'y Gen. No. 84-099; and (3) whether the entity is funded by or through the county, Op. No. 92-060; 1979 Op. Att'y Gen. No. 79-039.

The examination of these factors with respect to a veterans service commission reveals that it is essentially a subordinate department of the county.[3] A veterans service commission is organized under R.C. 5901.02: "In each county there shall be a commission known as _the veterans service commission_ composed of five persons. Such persons shall be residents of the county and shall be

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[2] Further exceptions to the requirement of competitive bidding are set forth in divisions (A) through (I) of R.C. 307.86.

[3] In 1940 Op. Att'y Gen. No. 3133, p. 1065, Vol. II, it was determined that the county prosecutor, as adviser to all county offices and county boards, was the legal adviser for the "soldiers' relief commission" established in the county. The name of the soldiers' relief commission was changed to the "veterans service commission" by Am. Sub. H.B. 626 (1987-1988 Ohio Laws, Part III, 4685, eff. Sept. 14, 1988).

appointed by a judge of the court of common pleas." Since a veterans service commission is established in each county, the territory over which the commission exercises its authority is coextensive with the geographic boundaries of the county. Although the fact that the geographic boundaries of an entity are coextensive with the boundaries of a county is not, standing alone, enough to conclude that the entity is a subdivision or subordinate department of the county, "it weighs in favor of that determination, since an entity that exercises authority over an area that exceeds the territorial limits of the county has been determined not to be a subdivision or subordinate department of the county on that basis." Op. No. 92-60 at 2-247.

With regard to the organization and supervision of a veterans service commission, R.C. 5901.02 provides that the members of the commission are appointed by a judge of the court of common pleas. Additionally, a judge of the court of common pleas may remove any member of the commission for cause and shall fill vacancies on the commission for the unexpired term. R.C. 5901.03. The board of county commissioners (or any other legislative authority of a county that has adopted a charter for its government) fixes the compensation for services of the members of the veterans service commission. R.C. 5901.04; *see also State ex rel. Hartlaub v. Morgan*, 57 Ohio App. 3d 113, 566 N.E.2d 693 (Summit County 1989). Thus, a veterans service commission is organized and supervised by the county that it serves.

Funding for a veterans service commission is also provided by the county through means of a tax levy. R.C. 5901.11.[4] The board of county commissioners may review and revise the budget submitted by the veterans service commission and thereafter must make the necessary levy to raise the amount it has approved. *Id.; see also* 1991 Op. Att'y Gen. No. 91-008.

A Veterans Service Commission Is a "Contracting Authority" for Purposes of R.C. 307.92

A veterans service commission has the authority to enter into contracts on its own behalf. *See, e.g.*, R.C. 5901.14 (authorizing the veterans service commission to contract for the provision of transportation services for veterans); R.C. 5901.16 (authorizing a veterans service commission to

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[4] R.C. 5901.11 reads as follows:

> On or before the last Monday in May in each year, the veterans service commission shall meet and determine in an itemized manner the probable amount necessary for the aid and financial assistance of indigent persons and for the operation of the veterans service office for the ensuing year. After determining the probable amount necessary for such purposes, the commission shall prepare and submit a budget in the manner specified in division (C) of section 5705.28 of the Revised Code to the board of county commissioners which may review and revise the budget requests. The board, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves.

purchase a plot in a cemetery for the burial, removal, and reinterment of bodies of neglected and indigent veterans). Since a veterans service commission is a county agency with the authority to enter into contracts on its own behalf, it is a "contracting authority" as that term is defined by R.C. 307.92. Accordingly, the requirements of R.C. 307.86 apply to the transactions of a veterans service commission.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that a veterans service commission organized pursuant to R.C. 5901.02 is subject to the competitive bidding requirements of R.C. 307.86.

Respectfully,

LEE FISHER
Attorney General

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SYLLABUS: 93-065

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