December 21, 1993

OPINION NO. 93-061

The Honorable James A. Philomena
Mahoning County Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503-1726

Dear Prosecutor Philomena:

You have requested an opinion on the following question:

> In regard to R.C. 307.07, may a board of county commissioners enter into contracts to develop and promote economic development where a director of economic development has not been appointed by the board of county commissioners and where the county commissioners have not entered into an agreement with a county planning commission, nor entered into an agreement with the Ohio cooperative extension service?

Whether the board of county commissioners may enter into contracts to develop and promote economic development in the manner you describe depends upon whether the board has been expressly or impliedly authorized to do so by statute. *See State ex rel. Shriver v. Board of County Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947).

County Plan of Economic Development

R.C. 307.07, concerning economic development within a county, states, in pertinent part:

> (A) The *board of county commissioners*, by resolution, *may create an office of economic development*, to develop and promote plans and programs designed to assure that county resources are efficiently used, economic growth is properly balanced, and that county economic development is coordinated with that of the state and other local governments. For this purpose, the board may appropriate moneys from the county general fund, or, pursuant to [R.C. 307.64], moneys derived from a tax levied pursuant to [R.C. 5705.19(EE)], for the creation and operation of the office for, any economic development purpose of the office, and to provide for the establishment and operation of a program of economic development. The *board may hire a director of economic development, who shall be a member of the unclassified civil service*, and fix his compensation; *or may do any of the following*:

(1) *Enter into an agreement with a county planning commission* within the county, created under [R.C. 713.22], *or a regional planning commission*, created under [R.C. 713.21], regardless of whether the county is a member of the commission, *to carry out all of the functions and duties of a director of economic development under division (B) of this section*. Any agreement shall set forth the procedure by which the county or regional planning commission shall gain the approval of the board of county commissioners for any actions, functions, and duties under division (B) of this section....

(2) E*nter into an agreement with the Ohio cooperative extension service*, providing for the use of employees hired by the Ohio state university under [R.C. 3335.36] *to carry out all of the functions and duties of a director of economic development under division (B) of this section*. Any agreement shall set forth the procedure by which the Ohio cooperative extension service shall gain the approval of the board of county commissioners for any actions, functions, and duties under division (B) of this section....

....

(3) Enter into an agreement with a public or private nonprofit organization to carry out all of the functions and duties of a director of economic development under division (B) of this section. The agreement shall set forth the procedure by which the nonprofit organization shall gain the approval of the board of county commissioners for any actions, functions, and duties under that division.[1]

(B) The director of economic development may:

(1) With the approval of the board, hire such staff and employ such technical and advisory personnel as he sees fit to enable him to carry out the functions and duties of the office;

(2) With the approval of the board, contract for services necessary to enable him to carry out the functions and duties of the office;

(3) With the approval of the board, enter into agreements with federal, state, and local governments and agencies thereof, and with public, private, or nonprofit organizations to carry out the functions and duties of the office;

(4) Maintain membership in development organizations;

(5) With the approval of the board, make loans or grants and provide other forms of financial assistance for the purpose of economic development, including financial assistance for permanent public improvements, in compliance with applicable laws of this state, and fix the rate of interest and charges to be made for such financial assistance;

(6) With the approval of the board, receive and accept grants, gifts, and contributions

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[1] R.C. 307.07 was recently amended in Am. H.B. 277, 120th Gen. A. (1993) (eff. Oct. 29, 1993) to add subdivision (3) to R.C. 307.07(A). Because your opinion request was written prior to the effective date of this amendment, you did not mention the possibility of the county's contracting with a nonprofit organization for economic development purposes. This opinion will assume that the county also has not contracted with a nonprofit organization as authorized by R.C. 307.07(A)(3).

> of money, property, labor, and other things of value, to be held, used, and applied only for the purpose for which they are made, from individuals, private and public corporations, the United States government or any agency thereof, from the state or any agency thereof, or from any political subdivision or any agency thereof, and may agree to repay any contribution of money or return any property contributed or the value thereof in amounts, and on terms and conditions, excluding the payment of interest, as the director determines, and may evidence the obligations by written evidence;
> (7) Establish with the board any funds that are necessary for the deposit and disbursement of gifts or contributions of money accepted for economic development purposes;
> (8) With the approval of the board, design, implement, monitor, oversee, and evaluate economic development plans, programs, strategies, and policies;
> (9) Perform all acts necessary to fulfill the functions and duties of the office. (Emphasis and footnote added.)

R.C. 307.07(A) thus authorizes a board of county commissioners to create an office of economic development "to develop and promote plans and programs designed to assure that county resources are efficiently used, economic growth is properly balanced, and that county economic development is coordinated with that of the state and other local governments." R.C. 307.07(A) also authorizes the board of county commissioners to "hire a director of economic development, who shall be a member of the unclassified civil service." Instead of hiring a director to exercise the powers enumerated in R.C. 307.07(B), R.C. 307.07(A) authorizes the board of county commissioners to do "any of the following:" enter into an agreement with a county or regional planning commission, with the Ohio Cooperative Extension Service, or with a public or private nonprofit organization "to carry out all of the functions and duties of a director of economic development under [R.C. 307.07(B)]."

R.C. 307.07(B) enumerates the powers of the director of economic development. In the event that the board of county commissioners decides not to hire a director of economic development, but instead to enter into an agreement with one of the entities specified in R.C. 307.07(A), the entity with whom the county so contracts may exercise the powers conferred upon a director of development in R.C. 307.07(B). R.C. 307.07(A).

You state that in Mahoning County an office of economic and community development has been established. The director of the office recently retired, and the board of county commissioners has no plans to replace the director. Instead, the board of county commissioners has entered into a contract with a consultant "who assists the board in economic and community development matters." Based upon these facts, you ask whether a board of county commissioners may exercise the powers described in R.C. 307.07 without hiring a director of development under R.C. 307.07(A), without contracting with a county or regional planning commission under R.C. 307.07(A)(1), and without contracting with the Ohio Cooperative Extension Service under R.C. 307.07(A)(2). As discussed in note 1, *supra*, this opinion assumes that the county also has not entered into a contract with a nonprofit organization under R.C. 307.07(A)(3).

The authority of a board of county commissioners with respect to economic development within the county is governed by R.C. 307.07. R.C. 307.07(A) expressly authorizes a board of county commissioners to employ a director of economic development, "who shall be a member of the unclassified civil service." Should the county commissioners choose to proceed without employing a director of economic development, R.C. 307.07(A)(1), (2), and (3) allow the board to contract with one of the specified entities to perform the duties of a director of economic development as set forth in R.C. 307.07(B). R.C. 307.07 does not, however, authorize a board of county commissioners to operate an office of economic development by any means other than these specifically set forth in R.C. 307.07(A) and (B).

The General Assembly recently amended R.C. 307.07(A) in Am. H.B. 277, *see* note 1, *supra*, by specifically adding nonprofit organizations to the list of entities a county may utilize, instead of hiring a director of development, to carry out a plan of economic development. The General Assembly's intent that R.C. 307.07(A) contains an exclusive list of the entities with which a county may contract for purposes of carrying out a plan of economic development is demonstrated by the necessity it perceived to amend R.C. 307.07 to add nonprofit organizations to the list of entities with which a county may so contract.

Further, because the General Assembly has expressly enumerated in R.C. 307.07 the specific alternatives available to a county that wishes to pursue a county plan of economic development, it is clear that the General Assembly did not intend that the board of county commissioners could itself operate the office of economic development or proceed with a plan of economic development in a manner other than those specified in R.C. 307.07(A). *See State v. Glidden*, 31 Ohio St. 309, 313 (1877) ("[w]here authority is vested in a public officer, and the mode is prescribed for exercising the authority, that mode must be followed"); *Squire v. Abbott*, 5 Ohio Ops. 352, 355 (C.P. Cuyahoga County 1936) ("[i]t is fundamental that when the legislature grants to a public officer the authority to perform an act in a specific manner, such manner, so designated, is likewise the extent of the power and that the public officer can legally perform the act in no other manner").

Additional Note

According to your opinion request, the Mahoning County commissioners have contracted with a consultant to assist them in a county program of economic development. Although this particular arrangement is not authorized by R.C. 307.07, similar ends could be achieved in two ways. R.C. 307.07(A) authorizes the board of county commissioners to employ a director of development who shall be a member of the unclassified civil service. Thus, pursuant to R.C. 307.07(A), the county commissioners may employ the consultant, as a member of the unclassified county service, to serve as director of development. In the alternative, should the consultant organize or incorporate a nonprofit organization, the county commissioners could then contract with that nonprofit organization, pursuant to R.C. 307.07(A)(3), to perform the functions and duties of a director of economic development set forth in R.C. 307.07(B).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, R.C. 307.07 does not authorize a board of county commissioners to pursue a county plan of economic development unless it has employed a director of development to exercise the powers enumerated in R.C. 307.07(B) or contracted with one of the entities specified in R.C. 307.07(A) to exercise such powers.

Respectfully,

LEE FISHER
Attorney General

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SYLLABUS: 93-061

R.C. 307.07 does not authorize a board of county commissioners to pursue a county plan of economic development unless it has employed a director of development to exercise the powers enumerated in R.C. 307.07(B) or contracted with one of the entities specified in R.C. 307.07(A) to exercise such powers.