April 15, 2004

The Honorable David E. Bowers
Allen County Prosecuting Attorney
Court of Appeals Building, Suite 302
204 North Main Street
Lima, Ohio 45801

SYLLABUS: 2004-013

A soldiers' memorial board of trustees appointed under R.C. 345.08 is without authority to enter into contracts with entertainers to perform at the memorial building.

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OPINION NO. 2004-013

The Honorable David E. Bowers
Allen County Prosecuting Attorney
Court of Appeals Building, Suite 302
204 North Main Street
Lima, Ohio 45801

Dear Prosecutor Bowers:

You have requested an opinion concerning the operation of the Veterans' Memorial Civic & Convention Center of Lima/Allen County (Civic Center). You have asked whether a county may agree to use its funds to guarantee performers appearing at the veterans' memorial a certain fee for their performances.

According to your information, it has been the practice of the board of trustees of the Civic Center to rent the Center's facilities at a fixed rate for each performance. The Civic Center's board of trustees questions whether it may, instead of merely renting out the facility, contract directly with performers to appear at the Civic Center. In so doing, the trustees propose "guaranteeing a sum of money to the performing group with any monies raised from ticket sales above the guarantee [going] entirely to the Civic Center," and, in the event that ticket sales do not produce sufficient revenue to pay the performer the contract price, the board of trustees would be obligated to pay any remaining sum.

Before answering your question, let us briefly examine the manner in which veterans memorials are established and operate. Pursuant to R.C. 345.01 a county, among other political subdivisions, may, upon voter approval, levy a tax for the purpose of establishing or operating and maintaining "a memorial to commemorate the services of all members and veterans of the armed forces of the United States." In the case of the establishment of such a memorial by a county, the board of county commissioners appoints a board of trustees, consisting of eleven members. R.C. 345.08. These trustees "serve without compensation, but shall be allowed traveling and other expenses, which, with the compensation of the secretary and other necessary

expenses of the board, shall be paid from the fund provided by [R.C. 345.11],[1] on the order of the president and secretary, after being allowed and approved by the board at an authorized meeting." R.C. 345.09 (footnote added).

Once a soldiers' memorial has been established, its board of trustees has certain responsibilities regarding the memorial. As described, in part, in R.C. 345.13: "[a] soldiers' memorial, provided for by [R.C. 345.01], shall be maintained so as to commemorate the services of all members and veterans of the armed forces of the United States. The board of trustees shall make rules and regulations for the use, administration, and maintenance of such memorial as is fitting and necessary to carry out the purposes thereof." Additional powers and duties of the board of trustees are described in R.C. 345.14.[2] As stated in 1927 Op. Att'y Gen. No. 119, vol. I, p. 192, 195, the board of trustees of a soldiers' memorial has "such powers, and *only such powers* as are expressly conferred by law and those impliedly necessary to carry the express

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[1] R.C. 345.11 establishes a fund in the county treasury known as "The Memorial Fund." This fund contains the proceeds of any tax levy or bond issue under R.C. 345.01-.17, which "shall be paid out on the order of the board of trustees, certified by the president and secretary of such board." R.C. 345.11.

[2] R.C. 345.14 states:

> The board of trustees, established by [R.C. 345.08], in addition to its usual powers shall:
>
> (A) Conduct, maintain, and operate a soldiers' memorial, for the benefit of the entire county, for community, civic, and patriotic purposes;
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> (B) Provide, with or without cost, suitable and convenient county headquarters for all nationally organized veterans' organizations, chartered by congress;
>
> (C) Use, rent, and lease office space in such memorial buildings to agencies of the United States and of this state or any of their political subdivisions engaged in any activity for the benefit of the men and women of the armed forces of the United States and the honorably discharged veterans thereof, and all earnings or receipts shall be used for the maintenance thereof;
>
> (D) Co-ordinate and assemble within a county, as nearly as possible, in a one-stop information or service center in such memorial, all governmental agencies operated for the benefit of the honorably discharged veterans of the armed forces of the United States.
>
> (E) Deposit in a bank or trust company, subject to the provisions of [R.C. 135.01-.21], all moneys, gifts and rentals excepting funds arising from the proceeds of the sale of bonds coming into the possession of said board of trustees by virtue of its operation. Thereupon, such funds may be disbursed by the board of trustees for the uses and purposes of such memorials and shall be accounted for as provided by law.

powers into effect."[3] Thus, whether a soldiers' memorial board of trustees may contract with entertainers to perform at the memorial facility, regardless of the terms of such contract, depends upon whether the General Assembly has granted the board such authority, either expressly or by necessary implication.

Specifically concerning the board of trustees' powers and duties to maintain and operate a soldiers' memorial that is a building, R.C. 345.13 states:

> A soldiers' memorial, provided for by [R.C. 345.01], shall be maintained so as to commemorate the services of all members and veterans of the armed forces of the United States. The board of trustees shall make rules and regulations for the use, administration, and maintenance of such memorial as is fitting and necessary to carry out the purposes thereof.

As further provided by R.C. 345.13, a memorial building "may include a public auditorium, music hall, and recreational facilities." R.C. 345.13 also authorizes the board of trustees to "establish rental fees and other charges for the use of the memorial, and [to] waive any portion of such charges." R.C. 345.13.

Thus, while the General Assembly has authorized the inclusion of a public auditorium, music hall, and recreational facilities in a soldiers' memorial building, the General Assembly has granted a soldiers' memorial board of trustees only limited authority with respect to uses of such building, including its public auditorium, music hall, or recreational facilities. Pursuant to R.C. 345.13, the trustees may establish rules and regulations for the use and administration of the building and may determine the amount, if any, to be charged for the use of the building. Nothing in R.C. 345.13 or elsewhere within R.C. Chapter 345, however, either expressly or by necessary implication, authorizes a soldiers' memorial board of trustees to contract with entertainers to perform at the memorial building.

A similar question as to the scope of authority possessed by the board members of a soldiers' memorial was addressed in 1927 Op. Att'y Gen. No. 119, vol. I, p. 192. There, the soldiers' memorial trustees had rented the memorial building to a company that used the building's theater for showing motion pictures and various types of live entertainment. Once the company ended its lease, the soldiers' memorial trustees took over the operation of the theater for the same purposes as it had been used by the former tenant. While the opinion acknowledged that the trustees possessed authority to lease the memorial building for any lawful purpose, it found that the trustees were without authority to "engage in the motion picture or show business." 1927 Op. Att'y Gen. No. 119, vol. I, at 195.

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[3] *See*, *e.g.*, *Dreger v. Public Employees Retirement System*, 34 Ohio St. 3d 17, 516 N.E.2d 214 (1987); *State ex rel. Shriver v. Board of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947).

In the situation you describe, the soldiers' memorial board of trustees would like to actually hire entertainers to perform at the memorial building for a fixed price. Because the statutes defining the authority of soldiers' memorial trustees remain virtually unchanged since the 1927 opinion was issued, however, we agree that the limited authority vested in a soldiers' memorial board of trustees simply does not extend to contracting with entertainers to perform at the memorial building.[4] We also agree with the conclusion in the 1927 opinion that the board of trustees' lack of authority to contract with entertainers to perform at the memorial building does not restrict the powers expressly vested in a soldiers' memorial board of trustees by R.C. 345.13 to establish regulations and to determine charges for the use of the building.

It is, therefore, my opinion, and you are hereby advised, that a soldiers' memorial board of trustees appointed under R.C. 345.08 is without authority to enter into contracts with entertainers to perform at the memorial building.

Respectfully,

JIM PETRO
Attorney General

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[4] Your question indicates your concern that a soldiers' memorial board's contracting with performers at a fixed price will obligate the trustees to payment of the contract price, even if the revenues derived from the performance are insufficient to meet that obligation. Having determined, however, that a soldiers' memorial board is without authority to enter into such contracts, we need not address the additional issues that would arise under such contracts concerning the use and obligation of public funds.