February 17, 1999

OPINION NO. 99-017

The Honorable Kenneth Egbert, Jr.
Seneca County Prosecuting Attorney
1 Jefferson Street
Tiffin, Ohio 44883

Dear Prosecutor Egbert:

Your predecessor requested an opinion regarding the establishment of a countywide public safety communications system whenever a county operates or proposes to operate a countywide 9-1-1 system. Currently, Seneca County does not operate a countywide public safety communications system. The county, however, has established a countywide 9-1-1 system pursuant to R.C. 4931.40-.53 that has one public safety answering point at the office of the county sheriff.[1] In order to better serve the public, the county has proposed the establishment of a new countywide 9-1-1 system with public safety answering points at the office of the county

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[1] As used in R.C. 4931.40-.53, the terms "9-1-1 system" and "public safety answering point" are defined as follows:

> (A) "9-1-1 system" means a system through which individuals can request emergency service using the telephone number 9-1-1.
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> ….
>
> (G) "Public safety answering point" means a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where subdivision personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.

R.C. 4931.40.

sheriff and the police department of the City of Tiffin. In light of these facts, your predecessor asked us to address the following questions:

1. Is a board of county commissioners required to establish a countywide public safety communications system?

2. If a county operates or proposes to operate a countywide 9-1-1 system, is a board of county commissioners required to establish a countywide public safety communications system?

Provisions concerning the creation and operation of a countywide public safety communications system are set forth in R.C. 307.63. *See also* R.C. 5705.19(KK) (a county may levy a tax "[f]or a countywide public safety communications system under section 307.63 of the Revised Code"). Pursuant to this section, "[a] board of county commissioners *may* establish a countywide public safety communications system."[2] R.C. 307.63(B) (emphasis added). *See* 1995 Op. Att'y Gen. No. 95-004 at 2-15 and 2-16.

It is a fundamental rule of statutory interpretation that the use of the word "may" in a statute should be given its ordinary meaning, unless a contrary intention is clearly indicated by the context of the statute. *State ex rel. City of Niles v. Bernard*, 53 Ohio St. 2d 31, 34, 372 N.E.2d 339, 341 (1978); *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 107, 271 N.E.2d 834, 837 (1971); *State ex rel. Dworken v. Court of Common Pleas of Cuyahoga County*, 131 Ohio St. 23, 25, 1 N.E.2d 138, 139 (1936). *See generally* R.C. 1.42 (words and phrases shall be construed according to the rules of grammar and common usage). As explained in *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d at 107-08, 271 N.E.2d at 837-38 (1971):

> The statutory use of the word "may" is generally construed to make the provision in which it is contained optional, permissive, or discretionary, at least where there is nothing in the language or in the sense or policy of the provision to require an unusual interpretation.

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[2] As used in R.C. 307.63, "countywide public safety communications system" means

> a system of communications facilities, equipment, and services that helps to provide immediate field exchange of police, fire, and emergency medical services information between the county and participating states, political subdivisions, and other public entities, without regard to which jurisdiction holds title to real or personal property used in the system or employs the persons responsible to dispatch emergency personnel using the system.

R.C. 307.63(A).

> The word "shall" is usually interpreted to make the provision in which it is contained mandatory, especially if frequently repeated.
>
> Ordinarily, the words "shall" and "may," when used in statutes, are not used interchangeably or synonymously.
>
> However, in order to serve the basic aim of construction of a statute–to arrive at and give effect to the intent of the General Assembly–it is sometimes necessary to give to the words "may" and "shall" as used in a statute, meanings different from those given them in ordinary usage, and one may be construed to have the meaning of the other.
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> But when this construction is necessary, the intention of the General Assembly that they shall be so construed must clearly appear from a general view of the statute under consideration, as where the manifest sense and intent of the statute require the one to be substituted for the other. (Citations omitted.)

Nothing in the language of R.C. 307.63 or elsewhere in the Revised Code evidences a legislative intent to impose a mandatory duty upon a board of county commissioners to establish a countywide public safety communications system. Absent such legislative intent, the term "may," as used in R.C. 307.63(B), must be accorded its common meaning. *See State ex rel. City of Niles v. Bernard*; *Dorrian v. Scioto Conservancy Dist.*; *State ex rel. Dworken v. Court of Common Pleas of Cuyahoga County.*

Because the word "may," as used in R.C. 307.63(B), is to be understood in its ordinary sense, it must be concluded that R.C. 307.63(B) does not require a board of county commissioners to establish a countywide public safety communications system. Instead, the power conferred upon the board of county commissioners pursuant to R.C. 307.63(B) is permissive or discretionary. In other words, pursuant to R.C. 307.63(B), a board of county commissioners is authorized, but not required, to establish a countywide public safety communications system.

Your predecessor's second question asks whether a board of county commissioners is required to establish a countywide public safety communications system when the county operates or proposes to operate a countywide 9-1-1 system. A review of R.C. 4931.40-.53, which provide for the creation and operation of countywide 9-1-1 systems, discloses no provision requiring a board of county commissioners to establish a countywide public safety communications system when the county operates or proposes to operate a countywide 9-1-1 system. In fact, countywide public safety communications systems and countywide 9-1-1 systems serve distinctly different purposes. As stated in 1998 Op. Att'y Gen. No. 98-032 at 2-180, which concluded that a countywide 9-1-1 system is not a countywide public safety communications system:

> Pursuant to the definitions of "9-1-1 service," "basic 9-1-1," and "enhanced 9-1-1," as used in R.C. 4931.40-.53, it is readily apparent that a countywide 9-1-1 system is a communications system whereby the public can

> request emergency service. The primary purpose of a countywide 9-1-1 system is to dispatch the appropriate emergency service provider to a location. A countywide 9-1-1 system is not used to provide immediate field exchange of police, fire, and emergency medical services information between the county and other political subdivisions. Accordingly, because a countywide 9-1-1 system is not used to provide immediate field exchange of police, fire, and emergency medical services information between the county and other subdivisions, a countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 is not a countywide public safety communications system, as defined by R.C. 307.63(A).

The operation of a countywide 9-1-1 system thus is not dependent upon the simultaneous operation of a countywide public safety communications system.

In addition, as determined above, R.C. 307.63 does not impose a mandatory duty upon a board of county commissioners to establish a countywide public safety communications system. Accordingly, a county that operates or proposes to operate a countywide 9-1-1 system is not required to establish a countywide public safety communications system.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. A board of county commissioners is not required to establish a countywide public safety communications system, as defined by R.C. 307.63(A).

2. A county that operates or proposes to operate a countywide 9-1-1 system pursuant to R.C. 4931.40-.53 is not required to establish a countywide public safety communications system, as defined by R.C. 307.63(A).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 99-017

1. A board of county commissioners is not required to establish a countywide public safety communications system, as defined by R.C. 307.63(A).

2. A county that operates or proposes to operate a countywide 9-1-1 system pursuant to R.C. 4931.40-.53 is not required to establish a countywide public safety communications system, as defined by R.C. 307.63(A).