March 28, 2003

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street, N.W., 4th Floor
Warren, Ohio 44481-1092

SYLLABUS: 2003-009

1. R.C. 5126.02(D) requires that a county board of mental retardation and developmental disabilities (MR/DD) be administered and operated as an entity separate from other entities of county government. R.C. 5126.02(D) does not prevent a county MR/DD board from cooperating, contracting, or combining activities with local school districts, as authorized by statute.

2. Pursuant to R.C. 5126.05(C), a county MR/DD board may enter into an agreement with one or more local school districts to obtain or supply transportation services for MR/DD students and students of local schools in a cooperative cost-sharing arrangement, or may join with one or more local school districts to cooperatively purchase transportation services from a third party, on the following conditions: (1) the transportation provided to each child must comply with provisions of any applicable statutes, rules, individualized education programs, and individualized habilitation plans; (2) funds restricted by law to use for a particular purpose may be used only for that purpose; and (3) a county MR/DD board may expend public funds only for its statutory purposes.

3. R.C. 5126.05(E) does not provide authority for a county MR/DD board to enter into a cooperative purchasing arrangement for the purchase of transportation services.

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OPINION NO. 2003-009

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street, N.W., 4th Floor
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

We have received your request for an opinion concerning the transportation of children by a county board of mental retardation and developmental disabilities, commonly known as a county MR/DD board. You have raised three questions, which may be stated as follows:

1. Is the transportation of mentally and developmentally disabled school-aged children to and from a county MR/DD board's facilities a "function" of the county MR/DD board pursuant to R.C. 5126.02(D)?

2. May funds derived from tax levies for the purpose of providing services to mentally and developmentally disabled individuals be combined with funds of local school districts, pursuant to R.C. 5126.05(C), for the purpose of busing MR/DD students together with students of local schools in a cooperative cost-sharing scheme?

3. Alternatively, may funds derived from tax levies for the purpose of providing services to mentally and developmentally disabled individuals be used in concert with funds of local school districts, pursuant to R.C. 5126.05(C) or (E), to cooperatively purchase busing services in a cost-sharing scheme for the purpose of busing MR/DD students together with students of local schools?

These questions have arisen in conjunction with a plan proposed by the Trumbull County Educational Service Center[1] for the joint operation of busing services by and between the Trumbull County Board of Mental Retardation and Developmental Disabilities and the various local school districts located within the jurisdiction of the Trumbull County Educational Service Center. As the plan has been explained by a member of your staff, it would provide for the buses and drivers now employed by the Trumbull County Board of Mental Retardation and Developmental Disabilities to transport schoolchildren (including children who do not have mental retardation, developmental disabilities, or other disabilities) to the schools of the local school districts.

The Trumbull County Educational Service Center proposes the plan as a means for reducing the transportation expenses of the local schools. The Trumbull County Board of Mental Retardation and Developmental Disabilities responds that it does not have statutory authority to provide transportation for schoolchildren who are not eligible for its programs, and that tax moneys raised for its purposes cannot lawfully be expended to provide transportation for those schoolchildren. Both entities have provided legal opinions in support of their positions, and you have asked for the Attorney General's opinion regarding some of the issues they have raised.

Education of children with mental retardation and developmental disabilities

To address your concerns, it is helpful to review briefly the functions of boards of education and county MR/DD boards with respect to the education of children with mental retardation and developmental disabilities. Because your questions pertain to local school districts, we direct this discussion to the boards of education of local school districts. *See* note 1, *supra.*

In accordance with federal and Ohio law, all children who have disabilities as defined by statute are entitled to a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. The special education program for each child is set forth in an individualized education program (IEP) designed to meet the unique needs of that child. 20 U.S.C.A. §§ 1400(d)(1)(A) and 1412(a)(1) (West Group 2000); 34 C.F.R. §§ 300.13 and 300.300 (2002); R.C. 3323.01(A), (B), (C), (D) and (E); R.C. 3323.011; R.C. 3323.02; R.C. 3323.04; 5 Ohio

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[1] An educational service center, formerly known as a county school district, consists of territory that is not within city or exempted village school districts. R.C. 3311.05(A). Thus, it is composed of territory that constitutes local school districts. R.C. 3311.01; R.C. 3311.05; *see also* R.C. 3311.053; 1999 Op. Att'y Gen. No. 99-023, at 2-150 n.1. An educational service center prescribes a curriculum and provides various types of services and support for local school districts within its jurisdiction. *See, e.g.,* R.C. 3301.0719; R.C. 3313.60; R.C. 3315.07; R.C. 3317.11; R.C. 3319.07; 2001 Op. Att'y Gen. No. 2001-043.

Admin. Code 3301-51-01(R), (V) and (MM); 5 Ohio Admin. Code 3301-51-02; 5 Ohio Admin. Code 3301-51-07. *See generally* 1991 Op. Att'y Gen. No. 91-024.

The board of education of the appropriate school district (including a local school district) is required, after consulting with the county board of mental retardation and developmental disabilities, to place each child with disabilities in an appropriate education program and assure that the child receives related services, including transportation, necessary to assist the child to benefit from the special education. To the maximum extent appropriate, children with disabilities must be educated and share services and activities with children who are not disabled. 20 U.S.C.A. § 1412(a)(5) (West Group 2000); 34 C.F.R. § 300.24 (2002); R.C. 3311.51; R.C. 3323.01(B) and (C); R.C. 3323.04; R.C. 3323.08; R.C. 3327.01; 5 Ohio Admin. Code 3301-51-01(JJ); 5 Ohio Admin. Code 3301-51-09; 5 Ohio Admin. Code 3301-51-10. *See generally* 1991 Op. Att'y Gen. No. 91-024; 1987 Op. Att'y Gen. No. 87-026. Various types of placements are possible, including placement in a program operated by a county MR/DD board. R.C. 3323.04; R.C. 3323.09.

School districts have the authority, and in some instances the duty, to provide transportation for schoolchildren, including children with disabilities. R.C. 3327.01. They have authority to enter into contracts to obtain services, including transportation services. *See* R.C. 3313.17; R.C. 3323.021; R.C. 3323.08; R.C. 3323.13; R.C. 3327.01; R.C. 3327.011; R.C. 3327.02; R.C. 3327.04; R.C. 3327.05; *see also Hensley v. Toledo Area Reg'l Transit Auth.*, 121 Ohio App. 3d 603, 700 N.E.2d 641 (Lucas County 1997); R.C. 3327.012 (authorizing the Superintendent of Public Instruction, subject to approval by the State Board of Education, to contract with "any firm, person, or board of education" for pupil transportation services). The school districts must provide special transportation[2] for a child with disabilities when the child's IEP requires it, and may provide bus aides if deemed necessary. R.C. 3327.01; 5 Ohio Admin. Code 3301-51-10. Each school district must ensure that, in transportation and other services and activities, a child with disabilities participates with nondisabled children "to the maximum extent appropriate to the needs of that child." 5 Ohio Admin. Code 3301-51-09(A)(5)(b); *see also* 5 Ohio Admin. Code 3301-51-07(G)(1). Thus, as permitted by an IEP and provided that transportation standards are satisfied, children with disabilities may share buses with other schoolchildren. 5 Ohio Admin. Code 3301-51-09(A)(5)(b); s*ee also* R.C. 3327.01; 5 Ohio Admin. Code 3301-51-10(E)(4).

A county MR/DD board has a variety of statutory powers and duties relating to the provision of programs and services for children and adults with mental retardation and developmental disabilities. *See, e.g.*, R.C. 3323.09; R.C. 5126.04; R.C. 5126.05; R.C. 5126.051; R.C. 5126.15. In addition to educational programs included in a child's IEP, a county MR/DD

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[2] Special transportation consists of transportation services that are directly related to a child's disability and required by the IEP or applicable state or federal law. 5 Ohio Admin. Code 3301-51-10(A)(2).

board may also provide programs as part of an individualized habilitation plan (IHP) designed to serve needs that are not primarily educational. R.C. 5126.01(H); R.C. 5126.04; 5 Ohio Admin. Code 3301-83-21. In conjunction with the performance of its duties, the county MR/DD board is authorized to provide transportation for the persons for whom it provides programs and services, either by operating a transportation system directly or by securing transportation services pursuant to contract. *See* R.C. 3323.01(C); R.C. 3323.09(B); R.C. 5126.01(B)(1)(f) and (S)(2)(b); R.C. 5126.04; R.C. 5126.042(C)(6); R.C. 5126.05(D); 5 Ohio Admin. Code 3301-51-07; 5 Ohio Admin. Code 3301-51-10; 5 Ohio Admin. Code 3301-83-21; 15 Ohio Admin. Code 5123:2-1-03; 2001 Op. Att'y Gen. No. 2001-023; *see also CB Transp., Inc. v. Butler County Bd. of Mental Retardation*, 60 Ohio Misc. 71, 79, 397 N.E.2d 781 (C.P. Butler County 1979).[3]

County MR/DD boards are creatures of statute. As such, they have only the powers and duties expressly conferred upon them by statute and the powers that are by implication necessary to carry out the express powers. *See, e.g., Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917); 1990 Op. Att'y Gen. No. 90-075; 1982 Op. Att'y Gen. No. 82-018. Therefore, a county MR/DD board is empowered to provide transportation only to the extent that the authority to provide transportation is expressly granted by statute or is necessary to carry out express statutory responsibilities.

Functions of a county MR/DD board under R.C. 5126.02(D)

Your first question asks, in essence, whether the transportation of mentally and developmentally disabled school-aged children to and from a county MR/DD board's facilities is a function of a county MR/DD board that, pursuant to statute, cannot be combined with activities of local schools. The basic issue is whether R.C. 5126.02(D) prevents a county MR/DD board from combining its transportation activities with those of local school boards. The relevant provision states:

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[3] Ohio statutes and rules establish the authority and standards for the transportation of schoolchildren. *See, e.g.*, R.C. 3327.01; R.C. 3327.013; R.C. 4511.75-.78; 5 Ohio Admin. Code 3301-83-03 to 3301-83-20. The general standards apply to all school children, including those with disabilities. Additional requirements, including training for drivers and transportation aides, apply when children with disabilities who have special transportation needs are transported for purposes of their individualized education programs, whether the transportation is provided by a school district or a county MR/DD board. 5 Ohio Admin. Code 3301-51-10; 5 Ohio Admin. Code 3301-83-04; 10 Ohio Admin. Code 4501-5-08; 2001 Op. Att'y Gen. No. 2001-023. Supplementary provisions apply to the transportation of children by county MR/DD boards, whether the transportation is provided in accordance with an IEP or an IHP. 5 Ohio Admin. Code 3301-83-21; 2001 Op. Att'y Gen. No. 2001-023; *see also* 15 Ohio Admin. Code 5123:2-1-03.

> A county board of mental retardation and developmental disabilities shall be operated as a separate administrative and service entity. The board's functions shall not be combined with the functions of any other entity of county government.

R.C. 5126.02(D).

This language is part of the section of the Revised Code that creates in each county a county board of mental retardation and developmental disabilities, consisting of five members appointed by the board of county commissioners and two members appointed by the probate judge of the county. R.C. 5126.02(B)(1). The plain language of R.C. 5126.02(D) indicates an intent to create a county MR/DD board that is administered and operated separately from the other entities of county government. Thus, for example, although the board of county commissioners has certain fiscal responsibilities with respect to the county MR/DD board, "the commissioners exercise no supervisory power or control over the programs, facilities and general operations" of the county MR/DD board. 1978 Op. Att'y Gen. No. 78-027, at 2-66; *see* R.C. 5126.05(G); R.C. 5705.19(L); R.C. 5705.222; 2001 Op. Att'y Gen. No. 2001-019.

The language of R.C. 5126.02(D) stating that the board's "functions shall not be combined with the functions of any other entity of county government" requires that the board remain separate and independent in its operations. The board must function as a separate entity, and not as part of any other entity of county government. *See* 1994 Op. Att'y Gen. No. 94-095, at 2-470 to 2-471. This language thus requires that the board retain authority and control over its administration and operations, and that it not be combined administratively with other entities of county government. R.C. 5126.02(D) has been consistently construed to preserve the administrative independence of county MR/DD boards, and county MR/DD boards have been organized and operated in this manner. *See, e.g.*, *Ebert v. Stark County Bd. of Mental Retardation*; R.C. 124.23(A); R.C. 124.241; R.C. 5126.25; 1994 Op. Att'y Gen. No. 94-095; 1992 Op. Att'y Gen. No. 92-061, at 2-253 ("[t]he county MR/DD board has extensive authority over its operations"); 1984 Op. Att'y Gen. No. 84-071; 1984 Op. Att'y Gen. No. 84-054; 1982 Op. Att'y Gen. No. 82-055; 1981 Op. Att'y Gen. No. 81-050.

R.C. 5126.02 does not directly address the question whether transportation activities of a county board of mental retardation and developmental disabilities may be combined with transportation activities of local school districts. School districts are not entities of county government, but are themselves political subdivisions separate and independent from the county. *See Cline v. Martin*, 94 Ohio St. 420, 115 N.E. 37 (1916); R.C. 3311.01; R.C. 3311.055; R.C. 3313.17; R.C. 5705.01(A); 1992 Op. Att'y Gen. No. 92-027, at 2-102. The extent to which school districts and county MR/DD boards are authorized to cooperate, contract, or combine their activities is governed by the statutes applicable to these entities. Their capacity to interact is not affected by R.C. 5126.02(D), which addresses the relationship between the county MR/DD board and the government of the county in which it is located.

We conclude, accordingly, that R.C. 5126.02(D) requires that a county board of mental retardation and developmental disabilities be administered and operated as an entity separate from other entities of county government. R.C. 5126.02(D) does not prevent a county MR/DD board from cooperating, contracting, or combining activities with local school districts, as authorized by statute.

Authority of a county MR/DD board to contract for services under R.C. 5126.05(C)

Your second and third questions concern the application of R.C. 5126.05(C) and (E) to the transportation proposal in question. You have asked whether funds derived from taxes levied for the purpose of providing services to mentally and developmentally disabled individuals may be combined with funds of local school districts for the purpose of busing MR/DD students together with students of local schools in a cooperative cost-sharing arrangement, or whether the funds may be used in concert with funds of local school districts to cooperatively purchase busing services in a cost-sharing arrangement.

R.C. 5126.05 sets forth various powers and duties of a county MR/DD board. We begin by considering the powers granted by division (C), which states:

> Any county board may enter into *contracts* with other such boards and with public or private, nonprofit, or profit-making agencies or organizations of the same or another county, *to provide the facilities, programs, and services authorized or required, upon such terms as may be agreeable*, and in accordance with this chapter and Chapter 3323. of the Revised Code and rules adopted thereunder and in accordance with sections 307.86 and 5126.071 [5126.07.1] of the Revised Code.

R.C. 5126.05(C) (emphasis added).

Division (C) of R.C. 5126.05 thus authorizes a county MR/DD board to contract with other entities, including local school districts and other public or private entities, to provide facilities, programs, and services that the county MR/DD board is authorized or required to provide, upon such terms as are agreed upon, and in accordance with relevant statutes and rules. A county MR/DD board may provide facilities, programs, and services by operating them directly or by obtaining them by contract. *See CB Transp., Inc. v. Butler County Bd. of Mental Retardation;* R.C. 3323.021; 1984 Op. Att'y Gen. No. 84-064. As mentioned previously, the provision of transportation is considered a related service. *See* R.C. 3323.01(C). Therefore, pursuant to R.C. 5126.05(C), a county MR/DD board is permitted to contract and cooperate with other entities in providing transportation services, as well as other services, facilities, and programs.

With respect to the provision of transportation services for persons with disabilities, R.C. 5126.082 directs the Ohio Department of Mental Retardation and Developmental Disabilities to adopt rules providing for county MR/DD boards to "[c]reate, in collaboration with other

agencies, transportation systems that provide safe and accessible transportation within the county to individuals with disabilities." R.C. 5126.082(B)(5). To implement the statutes governing the provision of transportation services, the Department has adopted the following regulatory provisions:

> (A) This rule directs the planning, administration and implementation of MR/DD transportation services and options which ensure availability, safety and identification of individual transportation needs. Implementation of this rule in county boards will promote the development of transportation services and options based on an individual planning process.
>
> (B) The county board shall ensure that an *array of transportation services* are available for all individuals enrolled in the county board program. These may be provided through *collaborative arrangements with other entities*.
>
> (C) The nature and extent of transportation services and options shall be addressed in county board policy, shall be determined for each individual through the individual's planning process, and shall be made available to all individuals enrolled in the county board and their families.

15 Ohio Admin. Code 5123:2-1-03 (emphasis added). Rule 5123:2-1-03 goes on to require each county MR/DD board to adopt policies and procedures for the general supervision and operation of its transportation services and options, and to address in these policies and procedures collaborative arrangements with other entities to provide transportation. 15 Ohio Admin. Code 5123:2-1-03(G).[4]

A county MR/DD board thus is given authority to enter into contracts with other entities, including school districts and other public and private entities, to establish collaborative arrangements for providing transportation services. *See also* R.C. 5126.05(A)(4) (authorizing a county MR/DD board to provide or contract for special education services and ensure that related services, including transportation, are available according to the plan and priorities developed under R.C. 5126.04). The transportation provided to each child pursuant to any contract must comply with all applicable statutes and rules and must be consistent with the requirements of any applicable IEP or IHP. 5 Ohio Admin. Code 3301-83-21(B) ("[t]he nature and extent of transportation services to be provided to each individual served shall be determined through the individualized education program or individualized habilitation plan process"); 15 Ohio Admin.

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[4] Administrative rules may provide for the implementation of statutory powers, but may not expand an agency's powers beyond those granted by statute. *See Carroll v. Dep't of Admin. Servs.*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704 (Franklin County 1983). Therefore, a county MR/DD board may enter into collaborative transportation arrangements only to the extent that it is so authorized by statute, and 15 Ohio Admin. Code 5123:2-1-03 cannot be construed to expand the board's statutory powers.

Code 5123:2-1-03(D) ("[t]ransportation provided by an agency under contract shall comply with all relevant transportation rules of the Ohio department of mental retardation and developmental disabilities and relevant sections of the Ohio Revised Code"). Provided that applicable standards are met, the county MR/DD board has discretion to select the types of arrangements that will serve its clients, in order to ensure the availability of an array of transportation services.

More generally, R.C. 5126.045 authorizes a county MR/DD board to provide services to a person who does not meet the eligibility standards. R.C. 5126.045(B) states, in part: "A county board may provide services to a person who does not meet the standards for eligibility." R.C. 5126.045(B) also authorizes the board to establish fees for these services, which may be paid for by the person, by another person on behalf of the ineligible person, or by another governmental entity. This provision permits a county MR/DD board to provide services that it is authorized by statute to provide, including transportation services, to individuals who are not eligible for its services. R.C. 5126.045 thus authorizes a county MR/DD board to provide transportation services to individuals who do not have mental retardation or developmental disabilities.

This grant of authority must, however, be read in conjunction with the other provisions of R.C. Chapter 5126 that define the purpose of a county MR/DD board. In general, a county MR/DD board has as its statutory responsibility the duty to use its resources for the benefit of persons with mental retardation and developmental disabilities, through the programs authorized by statute. *See, e.g.,* R.C. 5126.04; R.C. 5126.05. R.C. 5126.045 cannot reasonably be read as authorizing a county MR/DD board to go into the business of providing various services to ineligible persons, wholly apart from the services it provides for eligible persons. Rather, the apparent intent of R.C. 5126.045 is to permit the county MR/DD board, as part of its provision of services to MR/DD clients, to conclude that in some instances it furthers the board's purposes to provide services also to persons who, for whatever reason, do not meet the standards for eligibility. The grant of express authority to provide services to ineligible persons indicates that the provision of such services is permitted in conjunction with the performance of the board's other powers and duties. A county MR/DD board may thus determine, in accordance with R.C. 5126.045, that it serves its statutory purposes to provide transportation services to a schoolchild who does not have mental retardation or developmental disabilities.

As discussed above, the statutes and rules governing transportation not only permit, but require, that children with disabilities share services, including transportation, with students without disabilities, to the extent appropriate for each child. *See, e.g.,* 5 Ohio Admin. Code 3301-51-09(A)(5). Thus, there are circumstances in which it is appropriate for a child with disabilities to be transported on the same bus as children without disabilities, and existing provisions of law do not preclude a county MR/DD board from entering into an arrangement under which children placed in county MR/DD programs and students of the local schools are transported on the same vehicles. Each child's IEP or IHP may, however, address transportation needs, including the degree to which transportation with the general school population is appropriate. *See* 5 Ohio Admin. Code 3301-83-21(B). A variety of factors may impact upon the

question whether it is possible or desirable to combine the transportation of county MR/DD clients and schoolchildren in a particular situation.[5]

You have asked about using county MR/DD levy funds in combination or in concert with funds of local school districts for the purpose of busing MR/DD students and students of local schools in a cooperative cost-sharing arrangement. A county MR/DD board is authorized to contract with one or more school districts and other public or private entities, in accordance with applicable law, to provide transportation services "upon such terms as may be agreeable." R.C. 5126.05(C). The county MR/DD boards thus have discretion to design their contracts as they see fit, within the bounds of the statutes establishing their powers and duties. The general contracting authority provided by R.C. 5126.05(C) would permit a county MR/DD board to obtain transportation services from or provide transportation services to one or more local school districts in a cooperative cost-sharing arrangement, or to join with one or more local school districts to cooperatively purchase transportation services from a third party.

In a cooperative cost-sharing or cooperative purchasing arrangement, each participating entity generally pays the costs of the goods or services it receives. An arrangement of this type, under which the county MR/DD board and each participating school district pays for the services provided to its clients or students, is clearly authorized by R.C. 5126.05(C). You have indicated, however, that you are also concerned with the question whether the county MR/DD board is permitted to assume any transportation costs that might be attributable to the school boards or their students, and we address that issue as well.

With respect to funding, your question assumes that the county MR/DD board will be using funds derived from taxes levied for the purpose of providing services to mentally and developmentally disabled individuals. Under the Ohio Constitution and the Ohio Revised Code, funds derived from a tax levied for a particular purpose may be used only for that purpose. See Ohio Const. art. XII, § 5 ("every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); R.C. 5705.09; R.C. 5705.10 ("[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made…. Money paid into any fund shall be used only for the purposes for which such fund is established"); R.C. 5705.19; R.C. 5705.25; 1992 Op. Att'y Gen. No. 92-027; *see also In re Petition for Transfer of Funds,* 52 Ohio App. 3d 1, 2, 556 N.E.2d 191 (Montgomery County

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[5] R.C. 5126.05(D) expressly permits a county MR/DD board to combine transportation for children and adults enrolled in certain MR/DD programs with transportation for children enrolled in certain vocational and special education units. *See also* R.C. 3323.09(B). Adults who are enrolled in approved programs and are eligible for transportation services are authorized passengers on school buses. *See* 5 Ohio Admin. Code 3301-83-17(A)(1) and (B)(3). Thus, it may be possible to include these MR/DD adults in a program for combining MR/DD transportation with school transportation, subject to any applicable IEP, IHP, or other restriction. *See generally* 2001 Op. Att'y Gen. No. 2001-023.

1988) (Ohio Const. art. XII, § 5 "prevents taxes levied for a specific purpose which the voters approve being used for a purpose the voters did not approve"). Therefore, funds derived from taxes levied for the purpose of providing services to mentally and developmentally disabled individuals may be expended only for the purpose of providing services to mentally and developmentally disabled individuals. *See* R.C. 5705.19(L); R.C. 5705.222; 1986 Op. Att'y Gen. No. 86-103.

As noted previously, R.C. 5126.045 states that a county MR/DD board "may" provide services to individuals who do not meet the standards for eligibility, and also provides that the board "may" establish fees for these services. Use of the word "may" indicates that both the determination to provide services and the determination to charge fees are discretionary. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word "may" shall be construed as permissive and the word "shall" shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage").

R.C. 5126.045, however, does not change the requirement that funds restricted by law to use for a particular purpose may be used only for that purpose. Accordingly, in expending its funds, the county MR/DD board must ascertain the purposes for which particular funds may lawfully be used and expend them only for those purposes. The purposes for which proceeds of a particular tax may be expended depend both upon the statutes under which the tax was levied and the ballot language approved by the voters. *See, e.g.*, R.C. 5705.19; R.C. 5705.25; 2000 Op. Att'y Gen. No. 2000-044; 1999 Op. Att'y Gen. No. 99-022; 1998 Op. Att'y Gen. No. 98-032; 1992 Op. Att'y Gen. No. 92-058; 1992 Op. Att'y Gen. No. 92-027 (proceeds derived from a tax levy for the benefit of a county MR/DD board may not be simply transferred to school districts, even if the school districts assume responsibility for individuals previously served by the county MR/DD board, though the tax proceeds may be used to purchase goods or services); 1988 Op. Att'y Gen. No. 88-101; 1987 Op. Att'y Gen. No. 87-096; 1986 Op. Att'y Gen. No. 86-103.[6]

In addition to restrictions applying to tax proceeds collected for particular purposes, all public funds are held in trust for the benefit of the public and may be expended only pursuant to clear authority of law. *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918)

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[6] A county board of mental retardation and developmental disabilities may be funded from other sources as well as from taxes levied solely for its purposes. Division (G) of R.C. 5126.05 makes the board of county commissioners responsible for making appropriations sufficient to enable the county MR/DD board to perform its functions and duties and authorizes the use of local, state, and federal funds for this purpose. R.C. 5126.05(G); *see* 2001 Op. Att'y Gen. No. 2001-019. To the extent that moneys used to fund the county MR/DD board are not restricted as to their use, they are available for any proper purpose of the board, including expenditures authorized by R.C. 5126.05(C). However, the source of the funds does not expand the purposes of the board, and the board has no authority to expend funds except for proper statutory purposes.

(syllabus, paragraph 1). Further, any doubts regarding the authority to expend public funds must be resolved in favor of the public and against the grant of authority. *State ex rel. A. Bentley & Sons Co. v. Pierce* (syllabus, paragraph 3). Accordingly, a county MR/DD board may expend its funds only for purposes clearly authorized by statute. A county MR/DD board cannot expend its funds for the purposes of the school district in order to provide financial assistance to the school district in the absence of clear statutory authority authorizing that type of expenditure. *See generally City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 316, 114 N.E. 247 (1916) ("[w]hile … [a city and a city school district] are substantially the same in population and territory, yet they are nevertheless separate and distinct political subdivisions. Therefore the city … cannot make a gift to the [city school district], notwithstanding such a gift is for the benefit of substantially the same public"); 2002 Op. Att'y Gen. No. 2002-031; 1997 Op. Att'y Gen. No. 97-051 (a county MR/DD board is not authorized to donate its funds to a private, nonprofit entity for the development of residential services or supported living); 1988 Op. Att'y Gen. No. 88-018 (a county is not authorized to distribute funds to townships and municipalities within its boundaries based upon a general concern about their financial status); 1983 Op. Att'y Gen. No. 83-069.

The question whether the county MR/DD board is permitted to assume any transportation costs that might be attributable to the school boards or their students thus depends upon the particular costs in question, the funds that are available to pay for the costs, and the purposes for which the transportation is provided. Although R.C. 5126.045 permits a county MR/DD board to provide transportation for individuals who are not eligible for its services and to choose to pay those costs rather than charging them to the ineligible person or another entity, it does not provide blanket authority for a county MR/DD board to assume all of those costs in every case. Rather, it is necessary in a particular situation to look at the students transported to determine if their transportation serves the statutory purposes of the county MR/DD board, to look at the money the county MR/DD board has available to pay for the transportation to determine if it may lawfully be used for that purpose, and to make certain that the board is properly undertaking functions that it has been authorized to perform, rather than merely subsidizing the school district. The extent to which a county MR/DD may assume the costs of transporting schoolchildren who are not eligible for MR/DD services thus depends in each situation upon the circumstances of that situation.

We conclude, therefore, that pursuant to R.C. 5126.05(C), a county MR/DD board may enter into an agreement with one or more local school districts to obtain or supply transportation services for MR/DD students and students of local schools in a cooperative cost-sharing arrangement, or may join with one or more local school districts to cooperatively purchase transportation services from a third party, on the following conditions: (1) the transportation provided to each child must comply with provisions of any applicable statutes, rules, individualized education programs, and individualized habilitation plans; (2) funds restricted by law to use for a particular purpose may be used only for that purpose; and (3) a county MR/DD board may expend public funds only for its statutory purposes.

Authority of a county MR/DD board to enter into cooperative purchasing arrangements under R.C. 5126.05(E)

You have asked specifically whether the authority granted to a county MR/DD board by division (E) of R.C. 5126.05 authorizes a county MR/DD board to use funds derived from taxes levied for the purpose of providing services to mentally and developmentally disabled individuals, in concert with funds of local school districts, to cooperatively purchase busing services in a cost-sharing scheme for the purpose of busing MR/DD students together with local schoolchildren. As discussed above, the provisions of R.C. 5126.05(C) permit an arrangement of this type. However, because you have inquired about R.C. 5126.05(E), we will address that provision as well.

Division (E) of R.C. 5126.05 states that a county MR/DD board "may purchase all necessary insurance policies, may purchase equipment and supplies through the department of administrative services or from other sources, and may enter into agreements with public agencies or nonprofit organizations for cooperative purchasing arrangements." R.C. 5126.05(E). The cooperative purchasing language appears to be limited to the types of items referenced elsewhere in that division – that is, to insurance policies, equipment, and supplies. *See generally* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); *Renfroe v. Ashley*, 167 Ohio St. 472, 474, 150 N.E.2d 50 (1958) (under the rule of *noscitur a sociis*, "the meaning of words may be indicated or controlled by those with which they are associated"). The reference in division (E) to equipment and supplies contrasts with the language of division (C) that expressly authorizes contracts for services, as well as for facilities and programs.

The statutory language thus indicates that contracts authorized by division (C) may be used for the purchase of services, and that cooperative purchasing arrangements under division (E) are intended for the purchase of goods. Accordingly, R.C. 5126.05(E) may not reasonably be read as providing general authority for a county MR/DD board to enter into cooperative purchasing arrangements for services, such as transportation services. We conclude, therefore, that R.C. 5126.05(E) does not provide authority for a county MR/DD board to enter into a cooperative purchasing arrangement for the purchase of transportation services.

For the reasons discussed above, it is my opinion, and you are advised:

1. R.C. 5126.02(D) requires that a county board of mental retardation and developmental disabilities (MR/DD) be administered and operated as an entity separate from other entities of county government. R.C. 5126.02(D) does not prevent a county MR/DD board from cooperating, contracting, or combining activities with local school districts, as authorized by statute.

2. Pursuant to R.C. 5126.05(C), a county MR/DD board may enter into an agreement with one or more local school districts to obtain or supply

transportation services for MR/DD students and students of local schools in a cooperative cost-sharing arrangement, or may join with one or more local school districts to cooperatively purchase transportation services from a third party, on the following conditions: (1) the transportation provided to each child must comply with provisions of any applicable statutes, rules, individualized education programs, and individualized habilitation plans; (2) funds restricted by law to use for a particular purpose may be used only for that purpose; and (3) a county MR/DD board may expend public funds only for its statutory purposes.

3. R.C. 5126.05(E) does not provide authority for a county MR/DD board to enter into a cooperative purchasing arrangement for the purchase of transportation services.

Respectfully,

JIM PETRO
Attorney General