March 2, 1998

OPINION NO. 98-012

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

You have requested an opinion concerning the authority of a board of county commissioners to certify a county employee's workers' compensation claim, and to require the participation of county appointing authorities in corollary workers' compensation programs. By way of background, you state in your letter that the board of county commissioners has notified county appointing authorities that the board's designee, the county human resource department, will be solely responsible for the certification of workers' compensation claims for all county appointing authorities under the risk number assigned to the county.

The board of county commissioners also has notified other appointing authorities who are under the same risk number that they will be required to participate in a newly-developed "transitional work program," which is to serve as part of the board's efforts to reduce its workers' compensation costs. This program will, for a limited amount of time, provide transitional or light duty for county employees who are injured on the job.

In light of the actions thus taken by the board of county commissioners, you have asked the following questions:

1. May a board of county commissioners through its designated representative certify a county employee's claim for workers' compensation benefits when the board is not the appointing authority of the employee?

2. May a board of county commissioners require county appointing authorities to participate in county-sponsored workers' compensation cost reduction programs?

Statutory provisions governing the operation and management of Ohio's workers' compensation system are set forth in R.C. Chapters 4121 and 4123. Pursuant to these provisions, the Bureau of Workers' Compensation (Bureau) is responsible for processing claims for workers' compensation benefits. *See* R.C. 4121.03(E)(1); R.C. 4121.121. In order to process workers' compensation claims in an efficient and timely manner, the Bureau is authorized to establish administrative policies and rules that govern the handling and processing of workers' compensation claims. *See* R.C. 4121.03(E)(1); R.C. 4121.121; R.C. 4121.30-.32; R.C. 4123.05-.07.

In accordance with its rule-making power, the Bureau has promulgated rules to regulate the filing of workers' compensation claims. *See* 10 Ohio Admin. Code Chapter 4121-3; 10 Ohio Admin. Code Chapter 4123-3. With respect to the certification of workers' compensation claims by an employer, the Bureau has promulgated 10 Ohio Admin. Code 4123-3-08(B), which states, in relevant part:

> Certification by the employer on the first report of injury form.
>
> (1) An employer shall accept or reject the validity of a claim filed against its risk within the time as required by section 4123.511 and 4123.84 of the Revised Code and the rules of the industrial commission and bureau of workers' compensation. If the employer fails to comply with the established time limits, the bureau shall take such further action in the claim as provided for by section 4123.511 of the Revised Code and the rules of the industrial commission and the bureau.
>
> ....
>
> (4) *An employer's certification of a claim may be made by the employer, by an officer of the business entity which is the employer, or by a duly designated representative of the employer.* The person certifying a claim for the employer shall indicate in what capacity the person is employed (title). *No other person or entity may make such certification.* No person may certify his or her own claim, except in cases of a sole proprietor who has obtained coverage as an employee within Chapter 4123. of the Revised Code. (Emphasis added.)

Accord 10 Ohio Admin. Code 4121-3-08(B).

Pursuant to rule 4123-3-08(B)(1), an employer must certify an employee's workers' compensation claim. Such certification must be made by either the employer, an officer of the business entity that is the employer, or a duly designated representative of the employer. 10 Ohio Admin. Code 4123-3-08(B)(4). Because the responsibility for certifying an employee's workers' compensation claim rests ultimately with an employer, *see* rule 4123-3-08(B)(1), an employer is permitted to determine who is authorized to certify for the employer an injured employee's workers' compensation claim.

Your first question asks whether a board of county commissioners through its designated representative may certify a county employee's claim for workers' compensation

benefits when the board is not the appointing authority of the employee. As indicated above, an employer through an authorized representative may certify an injured employee's workers' compensation claim. Accordingly, if a board of county commissioners is the employer of an injured county employee who is not appointed by the board, the board may designate a representative to certify the injured employee's claim for workers' compensation benefits.

No provision within rule 4123-3-08 or elsewhere in the Ohio Administrative Code defines the term "employer" for purposes of rule 4123-3-08. However, R.C. 4123.01(B)(1) defines the term "employer," for purposes of R.C. Chapter 4123 (workers' compensation), to include, *inter alia*, "each county." It is a well-settled rule of statutory construction, that, "[i]f reasonably possible, the statutes and administrative regulations of Ohio must be harmonized, reconciled, and construed together. They must be read as an interrelated body of law." *State ex rel. Cuyahoga County Hospital v. Ohio Bureau of Workers' Compensation*, 27 Ohio St. 3d 25, 27, 500 N.E.2d 1370, 1372 (1986); 1985 Op. Att'y Gen. No. 85-095 at 2-403. Thus, it is our opinion that, pursuant to R.C. 4123.01(B)(1), the county is the employer of a county employee for purposes of the statutes and rules concerning workers' compensation. *Tudor v. Mayfield*, 62 Ohio App. 3d 633, 637, 577 N.E.2d 367, 370 (Greene County 1989), *motion to certify overruled,* 46 Ohio St. 3d 705, 545 N.E.2d 1283 (1989).

Because a county is a political subdivision of the state, *Schaffer v. Board of Trustees of Franklin County Veterans Memorial,* 171 Ohio St. 228, 230, 168 N.E.2d 547, 549 (1960), a county must act through its officers. In administrative and fiscal matters, a county acts through its board of commissioners. As stated in *Shanklin v. Madison*, 21 Ohio St. 575, 583 (1871):

> It may be laid down as a general rule, that the board of county commissioners is clothed with authority to do whatever the corporate or political entity, the county, might, if capable of rational action, except in respect to matters the cognizance of which is exclusively vested in some other officer or person.... It is, in an enlarged sense, the representative and guardian of the county, having the management and control of its financial interests.

See Picciuto v. Lucas County Bd. of Comm'rs, 69 Ohio App. 3d 789, 591 N.E.2d 1287 (Lucas County 1990), *motion to certify overruled,* 58 Ohio St. 3d 715, 570 N.E.2d 281 (1991); *State ex rel. Bitucote Hartex Co. v. Westenbaker,* 26 Ohio Law Abs. 564 (Ct. App. Darke County 1937). Accordingly, except where the law provides otherwise, a board of county commissioners is authorized to exercise all the fiscal and administrative powers conferred upon a county by the General Assembly. *See generally Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696, 699 (1993) ("[c]ounties ... may exercise only those powers affirmatively granted by the General Assembly").

Our research has disclosed no provision within the Revised Code or Ohio Administrative Code that authorizes a county officer who is an appointing authority[1] to certify an injured county employee's workers' compensation claim. Absent such authority, county officers who are appointing authorities are not authorized to certify workers' compensation claims. *See generally J. S. Bradley Co. v. Squire*, 65 Ohio App. 186, 189, 29 N.E.2d 430, 431 (Lucas County 1939) (a public officer may exercise only those powers that are bestowed upon him by statute).

Because the authority of a county to certify workers' compensation claims is not vested in county appointing authorities, such authority remains with the board of county commissioners. *See Shanklin v. Madison*. Thus, pursuant to rule 4123-3-08(B)(4), a board of county commissioners may certify a county employee's claim for workers' compensation or designate one or more county appointing authorities as its designated representative in the certification of workers' compensation claims.

This conclusion is supported by the decision of the court appeals in *Tudor v. Mayfield*, 62 Ohio App. 3d 633, 577 N.E.2d 367 (Greene County 1989), *motion to certify overruled,* 46 Ohio St. 3d 705, 545 N.E.2d 1283 (1989). In that case, the court was asked to determine whether the board of county commissioners or the county sheriff was the employer of a deputy sheriff for purposes of R.C. 4123.519 (now R.C. 4123.512), which at the time authorized a claimant or employer to appeal certain orders of the Industrial Commission to a court of common pleas. In concluding that the deputy sheriff's appointing authority, the county sheriff, was not the deputy sheriff's employer for purposes of R.C. 4123.519, the court stated:

> While Sheriff Bradley has the power, pursuant to R.C. 325.17, to appoint and employ the necessary deputies and assistants for his office, to

---

[1] A county officer is the "appointing authority" of a county employee when the officer has the power to appoint or remove the employee from his county position. *See* R.C. 124.01(D) (for purposes of R.C. Chapter 124 (department of administrative services–personnel), "_[a]ppointing authority_ means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution").

> fix the compensation of such employees, and to discharge them, he exercises that power on behalf of Greene County. In common parlance, we may refer to Sheriff Bradley as Tudor's "employer," because Sheriff Bradley is Tudor's supervisor, to whom Tudor is accountable on a daily basis; however, for purposes of workers' compensation, Greene County, not Sheriff Bradley, is Tudor's employer.
>
> R.C. 4123.01(B)(1) defines "employer" to include "each county." Moreover, R.C. 4123.01(A)(1) defines "employee" as "every person in the service of *** any county." Nowhere does the workers' compensation statute provide that supervisors or department heads of county offices shall be deemed "employers" of those who are deputies and assistants in their offices. The plain language of the statute is that the "county" is the "employer."

Tudor v. Mayfield, 62 Ohio App. 3d at 637, 577 N.E.2d at 370; *accord Istenes v. Lake County Auditor*, 97 Ohio App. 3d 735, 647 N.E.2d 534 (Lake County 1994), *discretionary appeal disallowed,* 71 Ohio St. 3d 1465, 644 N.E.2d 1387 (1995).

Accordingly, a board of county commissioners acts on behalf of the county as the employer of all county employees for purposes of the statutes and rules pertaining to workers' compensation. As the employer of county employees for this purpose, a board of county commissioners is authorized to determine which county officers and appointing authorities are authorized to certify workers' compensation claims. 10 Ohio Admin. Code 4123-3-08(B)(4). In light of the foregoing, it must be concluded that, pursuant to rule 4123-3-08(B), a board of county commissioners through its designated representative may certify a county employee's claim for workers' compensation benefits when the board is not the appointing authority of the employee.

Your second question asks whether a board of county commissioners may require county appointing authorities to participate in county-sponsored workers' compensation cost reduction programs. The apparent intent in requiring such participation is to enable the county to receive a discount on the workers' compensation premium rates it pays for county employees. In that regard, R.C. 4123.34(E)(2) provides that the Administrator of the Bureau "may grant discounts on premium rates for employers who ... [s]uccessfully complete a loss prevention program prescribed by the superintendent of the division of safety and hygiene and conducted by the division or by any other person approved by the superintendent."

10 Ohio Admin. Code 4123-17-70 in turn amplifies the statutory authority thus provided to the Administrator by setting forth the various loss prevention program requirements an employer must satisfy in order to receive a discounted premium rate. *See* 10 Ohio Admin. Code 4123-17-70(A) (pursuant to R.C. 4123.34(E), the Administrator "may grant a discount on premium rates to an eligible employer who meets the loss prevention program requirements under the provisions of this rule"). In order to participate in the

premium discount program, an employer must comply, *inter alia,* with the loss prevention requirements set forth in rule 4123-17-70(C), which states:

> If the bureau determines that an employer is eligible to participate in the premium discount program under this rule, the employer must comply with the following loss prevention requirements for initial participation and renewal of participation in the program.
>
> (1) The employer must participate in and comply with the ten step business plan as provided in paragraph (D) of this rule.
>
> (2) The employer must permit the bureau access to the employer's job sites to review the employer's safety program and safety progress.
>
> (3) The employer must agree to submit to the bureau or if working through a bureau certified sponsor as provided in paragraph (K) of this rule, to its sponsor, a premium discount plan renewal report identifying the activities the employer has performed with regard to the ten step business plan within the past year and the planned improvements for the next year. For renewals, the risk division or bureau certified sponsor will evaluate the employer's effectiveness in establishing the ten step business plan. The evaluation of each step will be based on an employer receiving the entire point value for each step that the employer has substantially implemented or maintained or receiving no points for each step that the employer has not substantially implemented or maintained.

As stated in rule 4123-17-70(C)(1), an employer must participate in and comply with the ten step business plan set forth in rule 4123-17-70(D) in order to participate in the premium discount program. The ten steps of the business plan are as follows:

> (1) Visible senior management leadership that promotes the belief that the management of safety is an organizational value....
>
> (2) Employee involvement and recognition that affords employees the opportunity to participate in the safety management process....
>
> (3) Early return-to-work strategies to help injured or ill workers return to work....
>
> (4) A program of regular communications on safety and health issues to keep all employees informed and to solicit feedback and suggestions....
>
> (5) Timely notification of accidents, including lag time reporting standards....
>
> (6) Assigning an individual the role of coordinating safety efforts for the company....
>
> (7) Orientation and training for all employees....
>
> (8) Published safe work practices so that employees have a clear understanding of how to safely accomplish their job requirements....

> (9) A written safety and health policy signed by the top company official that expresses the employer's values and commitment to workplace safety and health....
>
> (10) Internal program verification to assess the success of company safety efforts, to include audits, surveys, and record analysis.

10 Ohio Admin. Code 4123-17-70(D).

Thus, in order for an employer to participate in the premium discount program established under rule 4123-17-70, the employer must comply with the loss prevention requirements in rule 4123-17-70(C). Among such requirements is successful implementation of the ten step business plan outlined in rule 4123-17-70(D). 10 Ohio Admin. Code 4123-17-70(C)(1). In particular, an employer must establish policies and programs that, *inter alia*, promote the belief that the management of safety is an organizational value, afford employees the opportunity to participate in the safety management process, return injured or ill workers to work, keep employees informed on health and safety issues, provide for the timely notification of accidents, provide for the orientation and training of employees, and assess the success of the employer's safety efforts. An employer who fails to implement or maintain policies and programs that comply with the loss prevention requirements in rule 4123-17-70(C) may be disqualified from participating in the premium discount program established under rule 4123-17-70. *See* 10 Ohio Admin. Code 4123-17-70(F).

As determined above, the board of county commissioners is the employer of all county employees for purposes of the workers' compensation laws. *See* R.C. 4123.01(B)(1). As the employer of county employees, the board of county commissioners is authorized by rule 4123-17-70 to implement and maintain policies and programs that are designed to permit the county to participate in the premium discount program authorized by that rule. *See* R.C. 4123.34(E)(2).

In order for a board of county commissioners to successfully implement and maintain county policies and programs that permit the county to participate in the premium discount program established under R.C. 4123.34(E)(2) and rule 4123-17-70, the board must have the cooperation and participation of all county employees and appointing authorities. Absent such cooperation and participation, a county could be deterred from participating in the premium discount program.

It is, therefore, reasonable to conclude that the authority of a board of county commissioners to implement and maintain policies and programs that are designed to permit the county to participate in the premium discount program established under R.C. 4123.34(E)(2) and rule 4123-17-70 includes the concomitant authority to require county employees and county appointing authorities to comply with those same policies and programs. *See generally State ex rel. Hunt v. Hildebrant,* 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by the constitution or a

statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed"), *aff'd sub nom. State ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916). Thus, in response to your second question, we are of the view that a board of county commissioners may require county appointing authorities to comply with county policies and programs that are designed to ensure the county's eligibility to participate in the premium discount program authorized by R.C. 4123.34(E)(2) and rule 4123-17-70.

Based on the foregoing, it is my opinion, and you are advised as follows:

1. Pursuant to 10 Ohio Admin. Code 4123-3-08(B), a board of county commissioners through its designated representative may certify a county employee's claim for workers' compensation benefits when the board is not the appointing authority of the employee.

2. A board of county commissioners may require county appointing authorities to comply with county policies and programs that are designed to ensure the county's eligibility to participate in the premium discount program authorized by R.C. 4123.34(E)(2) and 10 Ohio Admin. Code 4123-17-70.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

March 2, 1998

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

SYLLABUS: 98-012

1. Pursuant to 10 Ohio Admin. Code 4123-3-08(B), a board of county commissioners through its designated representative may certify a county employee's claim for workers' compensation benefits when the board is not the appointing authority of the employee.

2. A board of county commissioners may require county appointing authorities to comply with county policies and programs that are designed to ensure the county's eligibility to participate in the premium discount program authorized by R.C. 4123.34(E)(2) and 10 Ohio Admin. Code 4123-17-70.