August 17, 2011

The Honorable D. Andrew Wilson
Clark County Prosecuting Attorney
50 East Columbia Street
P.O. Box 1608
Springfield, Ohio 45501

SYLLABUS: 2011-030

1. Neither a board of county commissioners nor a county building department has authority to require the registration of general contractors within the unincorporated territory of the county pursuant to R.C. 3781.102 or R.C. 4740.12.

2. A board of county commissioners is authorized to adopt a regulation concerning the registration of general contractors performing residential building work or existing structures work within the unincorporated territory of the county pursuant to R.C. 307.37(B)(1)(a) or (b) provided that such registration is not a condition precedent to approval of a general contractor's construction plans or to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the Ohio Building Code.

3. Pursuant to R.C. 307.15(A)(1), a county may enter into an agreement with a city to act on the city's behalf to license general contractors in accordance with the terms of a valid city ordinance and monitor their compliance with related requirements imposed upon licensed general contractors by the ordinance.

MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

August 17, 2011

OPINION NO. 2011-030

The Honorable D. Andrew Wilson
Clark County Prosecuting Attorney
50 East Columbia Street
P.O. Box 1608
Springfield, Ohio 45501

Dear Prosecutor Wilson:

You have requested an opinion whether Clark County has the authority to register general contractors in the unincorporated area of the county as well as license general contractors on behalf of a municipal corporation within the county. Specifically, you ask:

1. May a County Building Department register general contractors within the unincorporated territory of the county pursuant to R.C. 3781.102, R.C. 4740.12, or otherwise?

2. May a County contract with a City pursuant to R.C. 307.15(A), R.C. 307.38, or otherwise to register/license general contractors on the city's behalf and to monitor those contractors and the requirements listed in Section 1327.06 of the Springfield Codified Ordinances?

Both of your questions concern "general contractors," a term not defined expressly by the Revised Code,[1] as distinguished from the term "specialty contractors," which is specifically addressed by statute. We begin with a brief introduction to the statutory schemes relevant to your inquiries.

---

[1] R.C. 4740.01(B) defines "contractor" as "any individual or business entity that satisfies both of the following" two requirements:

> (1) Directs, supervises, or has responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance on a construction project with respect to one or more trades and who offers, identifies, advertises, or otherwise holds out or represents that the individual or business entity is permitted or qualified to perform, direct, supervise, or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a construction project;

R.C. Chapter 3781 addresses the establishment and enforcement of building standards throughout the state of Ohio. *See also* R.C. Chapter 3791 (building standards—offenses and standards). R.C. 3781.07 has created the Board of Building Standards (BBS) as the state agency with primary responsibility for the formulation and enforcement of these building standards. *See also* R.C. 3781.10. The construction and safety standards promulgated by the BBS and that govern the erection, construction, repair, alteration, and maintenance of buildings subject to its regulation are known as the Ohio Building Code (OBC). 9B Ohio Admin. Code Chapters 4101:1-1 to 4101:1-35.

In turn, the BBS may certify a county building department created by a board of county commissioners pursuant to R.C. 307.37 to enforce the provisions of the OBC. R.C. 3781.03; R.C. 3781.10; R.C. 3791.04. *See generally* 2006 Op. Att'y Gen. No. 2006-040, at 2-377 to 2-379 (discussing powers and duties of county building departments); 1995 Op. Att'y Gen. No. 95-038, at 2-212 to 2-214 (discussing powers of county building departments, including power to enforce the OBC). A county building department also may enforce a county building code adopted under R.C. 307.37. *See also* R.C. 307.38.

Finally, R.C. Chapter 715 sets forth various powers of municipal corporations. This chapter also contains provisions concerning building regulations. *See, e.g.*, R.C. 715.26-.30.

In your first question, you specifically ask about R.C. 3781.102 and R.C. 4740.12 and whether either of these statutes, or any other provision of the Revised Code, provides the authority for a county building department to register general contractors in the unincorporated territory of the county. Counties derive their authority from enactments of the General Assembly.[2] *Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993). A county, therefore, may exercise only that authority expressly conferred by statute or that may be necessarily implied in order to fully effect the exercise of an express power. *See id.* For the reasons that follow, we conclude that neither R.C. 3781.102 nor R.C. 4740.12 provide a county with such authority.

R.C. 3781.102(B) provides that "[e]ach board of county commissioners may adopt, by resolution, rules establishing standards and providing for the licensing of electrical and heating, ventilating, and air conditioning contractors who are not required to hold a valid and unexpired license pursuant to [R.C. Chapter 4740]." R.C. 3781.102 repeatedly refers to "specialty contractors" and defines "specialty contractor" as "a heating, ventilating, and air conditioning contractor, refrigeration

---

> (2) Performs or otherwise supervises or directs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades.

[2] Article X, § 1 of the Ohio Constitution directs the General Assembly to "provide by general law for the organization and government of counties." The Constitution also authorizes counties to adopt a charter by a vote of the people. Ohio Const. art. X, §§ 3, 4. Clark County has not adopted a charter and thus is limited to the powers and authorities set forth by statute. *See* 2009 Op. Att'y Gen. No. 2009-051, at 2-381; 2009 Op. Att'y Gen. No. 2009-012, at 2-98 n.2.

contractor, electrical contractor, plumbing contractor, or hydronics contractor, as those contractors are described in [R.C. Chapter 4740]." R.C. 3781.102(J). R.C. 3781.102 provides authority for a county to license certain specialty contractors, but it does not expressly or impliedly permit a county to register general contractors. Accordingly, neither a board of county commissioners nor a county building department is authorized by R.C. 3781.102 to register general contractors within the unincorporated territory of the county.

R.C. Chapter 4740 creates the Ohio Construction Industry Licensing Board and sets forth that board's duties and responsibilities. R.C. 4740.12, the specific provision about which you inquire, sets forth a limitation on political subdivisions, districts, or agencies of the state that adopt ordinances or rules requiring contractor registration and assessing registration or license fees. Specifically, such an ordinance or rule may not be adopted "unless that ordinance or rule also requires any contractor who registers and pays the registration or license fee to be licensed in the contractor's trade pursuant to [R.C. Chapter 4740]." R.C. 4740.12(A). In other words, local provisions requiring contractor registration and fee assessment also must require such contractors to be licensed under applicable state law. R.C. 4740.12 thus limits the way in which a political subdivision, district, or agency of the state may require contractor registration, but it does not permit a county to register general contractors.

R.C. 4740.12(B) acknowledges that a political subdivision of the state may register specialty contractors. *See* R.C. 3781.102(J) (defining "specialty contractor"). R.C. 4740.12(B) allows that:

> Except as provided in [R.C. 4740.12(A)], nothing in this chapter shall be construed to limit the operation of … any ordinance or rule of any political subdivision … of the state that does either of the following:
>
> (1) Regulates the installation, repair, maintenance, or alteration of plumbing systems, hydronics systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;
>
> (2) Requires the registration and assessment of a registration or license fee of tradespersons who perform heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, or hydronics construction, improvement, renovation, repair, or maintenance.

R.C. 4740.12(B) sets forth no such acknowledgement with respect to the registration of general contractors. Accordingly, a county, exercising only those powers expressly granted by the General Assembly, is not authorized pursuant to R.C. 4740.12 to register general contractors within the unincorporated territory of the county.

Although we conclude that neither R.C. 3781.102 nor R.C. 4740.12 authorize a county to register general contractors within the unincorporated territory of the county, we also must consider whether other provisions of the Revised Code might provide counties with this authority. As previously mentioned, R.C. 307.37 authorizes a board of county commissioners to adopt and enforce a

county building code.[3] Specifically, R.C. 307.37(B)(1)(a) and (b) authorize a county to regulate residential buildings and existing structures within the unincorporated area of the county.

R.C. 307.37(B)(1)(a) authorizes a board of county commissioners to "adopt local residential building regulations governing residential buildings…, to be enforced within the unincorporated area of the county." The statute further states that such regulations may not "differ from the state residential building code … unless the regulation addresses subject matter not addressed by the state residential building code or is adopted pursuant to [R.C. 3781.01]." R.C. 307.37(B)(1)(a).

Similarly, R.C. 307.37(B)(1)(b) authorizes a board of county commissioners to:

> adopt, administer, and enforce within the unincorporated area of the county … an existing structures code pertaining to the repair and continued maintenance of structures and the premises of those structures provided that the existing structures code governs subject matter not addressed by, and is not in conflict with, the state residential building code.

These provisions give a board of county commissioners broad authority to adopt regulations governing residential building work and existing structures work within the unincorporated territory of the county.[4] Unlike other statutory provisions, nothing in these provisions indicates that a board of county commissioners may only regulate specialty contractors or prohibits a board of county commissioners from regulating general contractors. *Compare* R.C. 307.37(B)(1)(a) and (b), *with* R.C. 715.27, *and* R.C. 3781.102.

Additionally, a regulation that requires a general contractor performing residential building work or existing structures work within the unincorporated territory of the county to register with the

---

[3] R.C. 3781.01(B) also permits a board of county commissioners to adopt "additional regulations governing residential structures that do not conflict with the state residential building code" provided certain procedures are followed.

[4] A board of county commissioners, not a county building department, has the authority to adopt building regulations. *See* 1995 Op. Att'y Gen. No. 95-038, at 2-214 ("it is clear that no statute either expressly or by necessary implication authorizes a *county building department* to enact rules to regulate the construction of homes within the unincorporated territory of the county. Instead, pursuant to R.C. 307.37, a board of county commissioners may adopt a county building code to regulate the erection, construction, repair, alteration, redevelopment, and maintenance of single-family, two-family, and three-family dwellings in the unincorporated territory of the county. Accordingly, a board of county commissioners may enact a regulation pursuant to R.C. 307.37 prohibiting a builder from constructing basements in poor soil types or in areas of poor drainage, or in areas designated as wetlands. However, any such regulation must be reasonable and lawful, and must not go beyond the scope of regulating the safety, health, and sanitary conditions of single-family, two-family, and three-family dwelling houses" (emphasis added)).

county does not conflict with the OBC. The OBC does not address the registration of general contractors. Significantly, however, a county may not require a general contractor to register with the county as a prerequisite to approval of construction plans or as a prerequisite to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC. *See Niehaus v. State ex rel. Bd. of Educ.*, 111 Ohio St. 47, 144 N.E. 433 (1924) (syllabus, paragraph 2) (because municipalities with building inspection departments are required by state statute to approve construction plans, a municipality has no authority to "thwart the operation" of state law by enacting an ordinance requiring the payment of a fee as a condition precedent to compliance with that state law); 1986 Op. Att'y Gen. No. 86-079, at 2-450. In other words, if a county adopts a regulation that requires a general contractor to register in order to perform residential building work or existing structures work within the unincorporated territory of the county and a general contractor fails to comply with the registration requirement, the county may not refuse to approve the contractor's construction plans or refuse to find that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC.[5] Similarly, if a county requires a general contractor to pay a fee as part of the registration, the county may not require payment of the fee as a prerequisite to approval of the contractor's plans or as a prerequisite to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC.

Accordingly, we conclude that a board of county commissioners may adopt a regulation concerning the registration of general contractors performing residential building work within the unincorporated territory of the county pursuant to R.C. 307.37(B)(1)(a) provided that such registration is not a condition precedent to approval of a general contractor's construction plans or to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC. Similarly, a board of county commissioners may adopt a regulation concerning the registration of general contractors performing work on existing structures within the unincorporated territory of the county pursuant to R.C. 307.37(B)(1)(b) provided that such registration is not a condition precedent to approval of a general contractor's construction plans or to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC.

Your second question asks whether a county may license general contractors on behalf of a city and monitor the general contractors' compliance with related requirements of the municipal licensing ordinance. We begin with a brief overview of a city's authority to license general contractors. Unlike counties, municipal corporations draw their primary authority and power from the local self-government (*i.e.*, home rule) provisions of the Ohio Constitution. Ohio Const. art. XVIII, § 3 ("[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in

---

[5] If a county adopts a regulation requiring a general contractor to register with the county and a contractor fails to do so, the county's remedies against the contractor are limited to enforcement as provided at the local level. *See* R.C. 307.99. Again, however, enforcement cannot be tied to the contractor's compliance with the OBC (*i.e.*, cannot be a condition precedent to approval of the contractor's construction plans).

conflict with general laws"); § 7 (adoption of municipal charter); *Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923) (syllabus, paragraph 1) ("all municipalities derive all their 'powers of local self-government' from the Constitution direct, by virtue of Section 3, Article XVIII, thereof"); 1988 Op. Att'y Gen. No. 88-039, at 2-189. Thus, a municipal police power ordinance that does not conflict with a general law of the state is a valid and enforceable enactment.

You ask about Section 1327.06 of the Springfield Codified Ordinances, which sets forth procedures and requirements for the licensure of general contractors. "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which [a] statute forbids and prohibits, and vice versa." *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph 2). We find no provision of the OBC, or any other provision of the Revised Code, forbidding or prohibiting a municipal corporation from licensing general contractors who work in the municipal corporation. Thus, the Springfield ordinance does not appear to conflict with state law. *See City of Middleburg Heights v. Ohio Bd. of Bldg. Standards*, 65 Ohio St. 3d 510, 605 N.E.2d 66 (1992) (syllabus) ("[a] municipality whose building department has been certified by the Ohio Board of Building Standards pursuant to R.C. 3781.10(E) to enforce state and local building codes within its territorial jurisdiction may adopt additional regulations not in conflict with state law"); *John Fithian Contracting Co. v. City of Salem*, 7th Dist. No. 07-CO-33, 2008-Ohio-5055, at ¶39 ("[i]f the legislation to be evaluated is silent on a certain matter, an ordinance that is not silent on that matter cannot conflict with the legislation under consideration"); 1978 Op. Att'y Gen. No. 78-008, at 2-19 ("a charter municipality possesses authority pursuant to Article XVIII, § 3, Ohio Constitution, and R.C. 715.26 to 715.29 to promulgate and enforce building regulations, limited only by the provisions of R.C. 3781.01"). Like a county, however, a municipal corporation may not "thwart the operation" of state law, specifically the OBC, by enacting an ordinance requiring a general contractor to obtain a license from the municipality as a prerequisite to approval of the contractor's construction plans or as a prerequisite to a finding of the contactor's compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC. *See Niehaus v. State ex rel. Bd. of Educ.*, 111 Ohio St. 47 (syllabus, paragraph 2); 1986 Op. Att'y Gen. No. 86-079, at 2-450. Accordingly, whether the Springfield ordinance is a valid enactment of the City of Springfield's municipal authority depends on whether a general contractor is required to obtain a license as a prerequisite to approval of its construction plans or to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC, a question we are unable to answer.[6]

Assuming that a municipal corporation has enacted a valid ordinance requiring a general contractor to obtain a license, we now turn to the question whether a county may perform, on behalf of a city, duties such as those outlined in Section 1327.06 of the Springfield Codified Ordinances. As set forth above, and unlike cities, non-charter counties derive their authority from enactments of the

---

[6] We are unable to determine from your opinion request and from the copy of the City of Springfield ordinance provided along with your request whether the ordinance requires general contractors to obtain a license as a prerequisite to approval of its construction plans or a determination of compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the OBC.

General Assembly. A non-charter county may exercise only that authority expressly conferred upon it by statute or as may be necessarily implied in order to fully effect the exercise of an express power. *See Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d at 582.

R.C. 307.15 provides a broad grant of authority to boards of county commissioners to "enter into an agreement with the legislative authority of any municipal corporation … whereby the board undertakes … to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render." R.C. 307.15(A)(1). In other words, if a city has the authority to enact and enforce a law, a county has the authority to enforce the law on behalf of the city upon agreement pursuant to R.C. 307.15.

As explained above, the City of Springfield has a city ordinance that sets forth procedures and requirements for the licensure of general contractors. Where a city has a valid ordinance requiring the licensing of general contractors, R.C. 307.15(A)(1) authorizes a county to enter into an agreement with the city to act on the city's behalf to license general contractors in accordance with the terms of the ordinance and monitor their compliance with related requirements imposed upon licensed general contractors by the ordinance.

You also have asked about the provisions of R.C. 307.38 and whether they grant authority to a county to enforce a local ordinance on behalf of a municipality. R.C. 307.38 addresses "local building regulations[,] existing structures code …[,] and the state residential and nonresidential building codes the board of building standards establishes pursuant to [R.C. Chapter 3781]." R.C. 307.38(A). R.C. 307.38(B) permits a board of county commissioners and a municipal corporation to enter into a contract "under which one entity enforces for the other entity any local building regulations, existing structures code, or, if certified pursuant to [R.C. 3781.10], the state residential and nonresidential building codes in the other entity's jurisdiction." While R.C. 307.38(B) may provide further authority for a county to enforce a municipal ordinance governing licensure of general contractors, that determination likely depends on the meaning of "local building regulations" as used in the statute. Because R.C. 307.15 provides a county with the authority to enforce a valid ordinance passed by a municipal corporation requiring the licensing of general contractors, we do not need to discuss the meaning of the language of R.C. 307.38(B) and determine whether that provision also gives a county such authority.

Thus, in response to your second question, pursuant to R.C. 307.15(A)(1), a county may enter into an agreement with a city to act on the city's behalf to license general contractors in accordance with the terms of a valid city ordinance and monitor their compliance with related requirements imposed upon licensed general contractors by the ordinance.

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

1. Neither a board of county commissioners nor a county building department has authority to require the registration of general contractors within the unincorporated territory of the county pursuant to R.C. 3781.102 or R.C. 4740.12.

2. A board of county commissioners is authorized to adopt a regulation concerning the registration of general contractors performing residential building work or existing structures work within the unincorporated territory of the county pursuant to R.C. 307.37(B)(1)(a) or (b) provided that such registration is not a condition precedent to approval of a general contractor's construction plans or to a determination that the contractor is in compliance with R.C. Chapter 3781, R.C. Chapter 3791, or the Ohio Building Code.

3. Pursuant to R.C. 307.15(A)(1), a county may enter into an agreement with a city to act on the city's behalf to license general contractors in accordance with the terms of a valid city ordinance and monitor their compliance with related requirements imposed upon licensed general contractors by the ordinance.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General