July 1, 1996

OPINION NO. 96-038

The Honorable William R. Swigart
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

Dear Prosecutor Swigart:

I have before me your opinion request in which you ask: "Can the Fulton County Engineer enter into an agreement with the Fulton County Board of Mental Retardation and Developmental Disabilities for the sale of gasoline and diesel fuel to be used by the MR/DD board's school buses?"[1] By way of background, your opinion request states:

> [T]he Fulton County engineer maintains at the county garage fuel tanks and a dispensing system for purposes of supplying the fuel requirements to the county engineer's vehicles. He is willing to sell the fuel at cost to the MR/DD board providing it is permissible to do so. The MR/DD board believes it would save the county money in regards to the recoupment of taxes and paper work.

Before addressing the authority of the county engineer to sell to the county board of mental

---

[1] It is my understanding that you are not asking about other types of arrangements under which various county entities might share in the use of the county engineer's gasoline storage facilities while paying for the expense of such gasoline through their individual appropriations. *See, e.g.*, R.C. 5126.05(F) (authorizing a county board of mental retardation and developmental disabilities to "enter into agreements with public agencies or nonprofit organizations for cooperative purchasing arrangements"). You have also not stated whether motor vehicle license and fuel tax moneys, the use of which is limited by Ohio Const. art. XII, § 5a, were used to finance the gasoline storage facilities; such factor could affect the permitted uses of the gasoline storage facility. *See generally Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one); 1994 Op. Att'y Gen. No. 94-019 (use of motor vehicle license and fuel tax moneys for removal of underground fuel storage tanks at county engineer's facility). Rather, you have limited your question to whether the county engineer may sell gasoline to the county board of mental retardation and developmental disabilities, either directly or through the board of county commissioners.

retardation and developmental disabilities gasoline purchased for the engineer's office, I find it necessary briefly to examine the ownership of county property. In the case of *Carder v. Bd. of Comm'rs*, 16 Ohio St. 354, 369-70 (1865), the court explained the concept of ownership of county property, as follows:

> The board of county commissioners is the body -- the *quasi* corporation -- in whom is vested by law the title of all the property of the county. In one sense they are the *agents* of the county, and in another sense they are the *county itself*. It is in this latter sense that they acquire, and hold in perpetuity, the title to its property. In this capacity they not only act *for* the county, but also act *as* the county. (Emphasis in original).

See also State ex rel. Bd. of County Comm'rs v. Allen, 86 Ohio St. 244, 99 N.E. 312 (1912) (it is the county commissioners in whom the General Assembly has vested title to all the property of the county). The role played by the board of county commissioners and the various county officeholders was expanded upon by the court in *Christy v. Comm'rs of Ashtabula County*, 41 Ohio St. 711, 717 (1885), which stated: "[C]ounty commissioners may take and hold *title* to anything that a county may hold or own, although in the actual custody or expenditure the county must, under some statute, act by an officer, or officers, other than its commissioners." (Emphasis in original.) Thus, the ownership of the gasoline purchased for the use of the county engineer's office, although funds appropriated specifically to that office may have been used for the purchase, is vested in the county commissioners, acting as the county. Because of the manner in which county property is held, it is not clear that the county engineer "owns" the gasoline he proposes to sell to the county board of mental retardation and developmental disabilities.

With this in mind, I turn to the question of whether the county engineer has been authorized by statute to exercise control over gasoline purchased for his office such that he may sell such gasoline to another entity of county government. As stated in *AFSCME, Local 1045 v. Polta*, 59 Ohio App. 2d 283, 284, 394 N.E.2d 310, 311 (Erie County 1977): "The office of the county engineer is a creature of statute. The holder of such office has only such powers and duties as are expressly given to him by statute, or as are naturally and necessarily implied from the language of the statute." The county engineer may, therefore, sell gasoline and diesel fuel to the county board of mental retardation and developmental disabilities only if he has been authorized by statute, either expressly or by necessary implication, to do so.

The powers and duties of the county engineer are set forth in R.C. Chapter 315 and throughout R.C. Title 55. There is no statutory provision that expressly authorizes the county engineer to sell to a county board of mental retardation and developmental disabilities gasoline and diesel fuel purchased by the engineer's office. I am also unable to find any statute from which the county engineer's authority to sell gasoline and diesel fuel, whether to the board of county commissioners or to the county board of mental retardation and developmental disabilities, may be reasonably and necessarily implied.[2] Rather, when the General Assembly has intended that a

---

[2] R.C. 307.12(B) does, however, authorize a county officer or department head to determine that "county-owned personal property under his jurisdiction, including motor vehicles, road

statutory entity have the power to sell property, it has expressly so provided. *See, e.g.*, R.C. 122.46 (Director of Development may buy and sell certain property); R.C. 306.04(C)(2) (county transit board may "sell,...lease as lessee or lessor...a county transit system consisting of all real estate and interests therein, personal property, and a combination thereof"); R.C. 307.12(A) (authorizing the county commissioners to sell personal property "which is not needed for public use, or is obsolete or unfit for the use for which it was acquired").

Part of your question is whether the county engineer may sell gasoline to the county board of mental retardation and developmental disabilities through the board of county commissioners. As mentioned in your opinion request, a board of county commissioners is authorized by R.C. 307.12 to sell personal property of the county. Such authority is limited, however, to the sale of such property "which is not needed for public use, or is obsolete or unfit for the use for which it was acquired," R.C. 307.12. The gasoline and diesel fuel you describe clearly falls outside this description because the sale would be for use by another county entity, the county board of mental retardation and developmental disabilities, for the same use for which it was acquired by the county engineer. Similarly, while a board of county commissioners may, on occasion, sell certain property on behalf

---

machinery, equipment, tools, or supplies, is not of immediate need," at which point he may "*lease* such personal property to any *municipal corporation, township, or other political subdivision.*" (Emphasis added.) R.C. 307.12(B) also states that, "[s]uch lease shall require the county to be reimbursed under terms, conditions, and fees established by the board of county commissioners, or under contracts approved by the board." Division (B) of R.C. 307.12 thus gives a county officer only limited authority over personal property under his jurisdiction, and that is to lease, not sell, such property to other political subdivisions. The sale of county property, however, is within the province of the county commissioners to be exercised in accordance with the remaining divisions of R.C. 307.12. *See generally* 1984 Op. Att'y Gen. No. 84-054 (finding personal property under the jurisdiction of a county board of mental retardation and developmental disabilities to be county property, the disposition of which is governed by R.C. 307.12, and concluding that, pursuant to R.C. 307.12(B), the board may only lease, not sell, such property).

of another entity, *see*, *e.g.*, R.C. 306.04(C)(2) (board of county commissioners which operates a transit system may sell property), I find no authority for the county commissioners to act on behalf of the county engineer in the situation you describe.

Based on the foregoing, it is my opinion, and you are hereby advised that, a county engineer has no authority to sell to a county board of mental retardation and developmental disabilities, either directly or through the board of county commissioners, gasoline and diesel fuel that he has purchased for the use of the county engineer's office.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

July 1, 1996

The Honorable William R. Swigart
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

SYLLABUS: 96-038

A county engineer has no authority to sell to a county board of mental retardation and developmental disabilities, either directly or through the board of county commissioners, gasoline and diesel fuel that he has purchased for the use of the county engineer's office.