

December 21, 2016

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

SYLLABUS:

2016-038

1. Neither R.C. 9.482 nor R.C. 307.15 grants a board of county commissioners authority to contract with boards of township trustees and legislative authorities of municipal corporations to form a joint enterprise to demolish vacant and abandoned buildings and remediate other nuisance properties within the county.
2. Pursuant to R.C. 167.01, a board of county commissioners may form a regional council of governments with boards of township trustees and legislative authorities of municipal corporations within the county for the purpose of performing services or functions related to the demolition of vacant and abandoned buildings and the remediation of other nuisance properties within the county, so long as those services or functions are authorized by R.C. 167.03(A), (B), or (C) or R.C. 167.08.
3. A board of county commissioners may adopt local residential building regulations or an existing structures code pursuant to R.C. 307.37(B) that addresses the repair and maintenance of structures and their premises located in unincorporated areas of the county, provided that the local residential building regulations or existing structures code does not conflict with the state residential building code.
4. A board of county commissioners may enter into an agreement with the legislative authority of a municipal corporation pursuant to R.C. 307.15 for the enforcement of county local residential building regulations or an existing structures code within the boundaries of the municipal corporation.

5. A board of county commissioners may not require a person or entity to post a performance bond upon bidding for or entering into a contract with a municipal corporation or township to perform services related to the demolition of vacant and abandoned buildings or the remediation of other nuisance properties.
6. A board of county commissioners may enforce municipal or township regulations that relate to the maintenance and demolition of residential buildings within the territories of a municipal corporation or township by an agreement with a municipal corporation under R.C. 307.38(B) or by an agreement with a township under R.C. 505.75(D)(1).
7. A provision in an agreement between a board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations to form a joint enterprise for the demolition of vacant and abandoned buildings and the remediation of other nuisance properties that purports to impose uniform demolition and remediation standards in the territories of the political subdivisions forming the joint enterprise does not constitute the adoption or amendment of building regulations in each of the member political subdivisions. The adoption or amendment of a building regulation in a county or township requires a duly adopted resolution by a board of county commissioners or board of township trustees.
8. A board of township trustees may not impose an assessment for mowing, or the maintenance or demolition of real property, when the work is performed by a volunteer and results in no cost to the township.



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OPINION NO. 2016-038

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

Dear Prosecutor Watkins:

You have requested an opinion regarding the authority of a board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations to form a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county. Your letter asks sixteen questions related to the proposed joint enterprise. For clarity and ease of organization, we have divided your questions among three separate opinions. This opinion addresses the issues of law presented by questions 1, 2, 3, 8, and 9 in your letter. We have rephrased those questions and renumbered them, in part, as follows:

1. May a board of county commissioners, pursuant to R.C. 9.482, R.C. 307.15, or any other statute, contract with boards of township trustees and legislative authorities of municipal corporations within the county to form a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county?
2. If a board of county commissioners is permitted to enter into an agreement to form a joint enterprise with the townships and municipal corporations in the county pursuant to R.C. 9.482 or R.C. 307.15, is the board of county commissioners required to have statutory authority in addition to R.C. 9.482 or R.C. 307.15 to enter into the agreement?
3. May county, township, and municipal officers and employees whose powers relate to the demolition of buildings and abatement of nuisances, exercise those powers concurrently to accomplish the goals of a joint enterprise created by a board of county commissioners, the boards of

township trustees, and the legislative authorities of municipal corporations pursuant to R.C. 9.482 or R.C. 307.15?

4. May a board of county commissioners adopt countywide regulations concerning the maintenance and demolition of properties that are within the jurisdiction of the joint enterprise, as well as regulations that require workers to post a bond?
5. If the answer to the preceding question is “no,” may the participating political subdivisions agree to enforce only the regulations that lawfully apply in the territory in which the property is located?
6. May the agreement forming the joint enterprise include provisions that address maintenance and demolition standards for the jurisdiction of the joint enterprise? Do those provisions constitute the adoption or amendment of regulations, or does each political subdivision that is part of the joint enterprise have to adopt new or amended regulations?
7. May the county, townships, and municipal corporations that are part of the joint enterprise impose an assessment against a property owner for mowing or the maintenance or demolition related to a nuisance property, when the work is performed by a volunteer? If so, may the moneys collected pursuant to the assessment be allocated among the political subdivisions in proportion to the work performed by each, or may the moneys be placed in a joint fund to be used for demolition expenses?

The Attorney General may advise a prosecuting attorney concerning matters that are within the scope of the prosecuting attorney’s duties. R.C. 109.14. A prosecuting attorney has no authority to advise a municipal corporation or, absent an agreement, a township that has adopted a limited home rule government pursuant to R.C. Chapter 504. R.C. 309.09; R.C. 504.15(B). Your letter does not indicate that you serve as the law director for the home rule townships in Trumbull County. Further, Trumbull County has not adopted a charter pursuant to Ohio Const. art. X, § 3. Thus, this opinion considers the authority of a statutory county and statutory townships to enter into the agreement proposed by the Trumbull County Board of Commissioners, as you have described it.

Authority to Form a Joint Enterprise for the Purpose of Demolishing Vacant and Abandoned Buildings and Remediating other Nuisance Properties

The first question asks whether a board of county commissioners may contract with boards of townships trustees and legislative authorities of municipal corporations within the county pursuant to R.C. 9.482, R.C. 307.15, or any other statute, to form a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county. We begin our examination with R.C. 307.15, the provisions of which have a long history in Ohio law.

The General Assembly enacted G.C. 2450-1 through G.C. 2450-5, the predecessors to R.C. 307.15, in 1935. 1935-1936 Ohio Laws, Part I 102 (eff. July 17, 1935). In the 1953 recodification of the General Code as the Revised Code, the provisions of G.C. 2450-1 through G.C. 2450-5 were reenacted and renumbered as R.C. 307.15. 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953). R.C. 307.15(A)(1) authorizes a board of county commissioners and the legislative authority of certain governmental entities to enter into a contract “whereby the board [of county commissioners] undertakes, and is authorized by the contracting [entity], to exercise any power, perform any function, or render any service, on behalf of the contracting [entity] or its legislative authority, that such [entity] or legislative authority may exercise, perform, or render.” The governmental entities whose legislative authorities are authorized to contract with a board of county commissioners under R.C. 307.15(A)(1) include a “municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district, or ... any other county.” R.C. 307.15(A)(1) also authorizes a board of county commissioners and the legislative authority of a municipal corporation to enter into a contract “whereby the legislative authority of [the] municipal corporation undertakes, and is authorized by the board of county commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform or render.”¹

The General Assembly enacted R.C. 9.482 in 2011 in Am. Sub. H.B. 153, 129th Gen. A. (2011) (eff. June 30, 2011). R.C. 9.482(B)(1) authorizes a “political subdivision,” as that term is defined in R.C. 2744.01(F), to contract with another political subdivision or with a state agency “whereby the contracting political subdivision or state agency agrees to exercise any power, perform any function, or render any service for the contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render.”² See also R.C. 9.482(A)(1) (defining “[p]olitical subdivision” in the same manner as the term is defined in R.C. 2744.01(F)). Under R.C. 2744.01(F), a “[p]olitical subdivision” is “a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.” R.C. 2744.01(F) includes within its definition of “political subdivision” a

¹ R.C. 307.15(A)(1) also authorizes a board of county commissioners to contract with a board of township trustees “whereby the board of county commissioners or [designated county official], purchases at the request of the township any materials for the construction, maintenance, or repair of any township road or for the maintenance or repair of any township building, and sells the materials to the township at the cost to the county.”

² R.C. 9.482(B)(2) authorizes a state agency to contract “with a political subdivision whereby the contracting political subdivision agrees to exercise any power, perform any function, or render any service for the contracting recipient state agency that the ... agency is otherwise legally authorized to exercise, perform, or render.”

variety of entities, including, but not limited to, a regional planning commission, a county planning commission, an emergency planning district and joint emergency planning district designated under R.C. 3750.03, a county land reutilization corporation organized pursuant to R.C. Chapter 1724, and a regional council of governments established pursuant to R.C. Chapter 167.

R.C. 9.482(B)(1) and R.C. 307.15(A)(1) are nearly identical in their language, differing only, in relevant part, with respect to the governmental entities that are authorized to contract with each other under each statute. R.C. 307.15(A)(1) authorizes a board of county commissioners, by contract, to exercise any power, perform any function, or render any service on behalf of one of the governmental entities specified therein. The statute also authorizes the legislative authority of a municipal corporation to exercise any power, perform any function, or render any service on behalf of a board of county commissioners. R.C. 9.482(B)(1) expands beyond those enumerated in R.C. 307.15(A)(1) the categories of political subdivisions and governmental entities authorized to enter into such an agreement. R.C. 9.482(B)(1) does this by authorizing any state agency or political subdivision included within the definition of “political subdivision” under R.C. 2744.01(F) to exercise any power, perform any function, or render any service on behalf of another political subdivision so defined.

You ask whether a board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations may use the contracting authority conferred upon them under R.C. 9.482 or R.C. 307.15 to form a joint enterprise to demolish vacant and abandoned buildings and remediate other nuisance properties. Under either R.C. 9.482(B)(1) or R.C. 307.15(A)(1), a board of county commissioners may enter into an agreement with the legislative authority of a municipal corporation or the board of trustees of a township whereby the county commissioners will exercise any power, perform any function, or render any service that the recipient municipal corporation or township may exercise, perform, or render. Alternatively, pursuant to R.C. 9.482(B)(1) or R.C. 307.15(A)(1), a board of county commissioners may enter into an agreement with a municipal corporation authorizing the legislative authority of the municipal corporation to exercise any power, perform any function, or render any service on behalf of the county. Pursuant to R.C. 9.482(B)(1), a board of county commissioners may enter into an agreement with a board of township trustees whereby the board of township trustees exercises any power, performs any function, or renders any service for the county that the county is legally authorized to perform.

Prior opinions of the Attorney General have concluded that R.C. 307.15 does not authorize political subdivisions to form a joint enterprise to exercise powers, perform functions, or render services that are the subject of an agreement under that statute. *See, e.g.*, 1986 Op. Att’y Gen. No. 86-084, at 2-478; 1986 Op. Att’y Gen. No. 86-012, at 2-58 n.1. As explained in 1986 Op. Att’y Gen. No. 86-084, at 2-478: “R.C. 307.15 ... addresses those situations in which one political subdivision assumes, pursuant to contract, responsibility for undertaking and performing a particular function of government that is the duty of, and would otherwise have been undertaken by, the other contracting subdivision.” Even though the contracting subdivision retains authority to exercise the power or perform the function that is the subject of the R.C.

307.15 agreement, R.C. 307.15 does not contemplate the joint exercise of that power or the joint performance of that function of government. 1986 Op. Att’y Gen. No. 86-084, at 2-478; 1986 Op. Att’y Gen. No. 86-012, at 2-58 n.1 (“[a]lthough a contracting subdivision thus maintains the powers exercised on its behalf by the board of county commissioners . . . , I do not believe that the [language of R.C. 307.15(A)(2)³] permits a subdivision to authorize the county commissioners to act on behalf of the subdivision as to a particular matter, and yet maintain the power simultaneously to act on its own behalf as to the same matter” (footnote added)).

The conclusions reached in our prior opinions are supported by language in R.C. 307.15(B). R.C. 307.15(B) expressly authorizes two or more counties to “create any *joint agency* to exercise any power, perform any function, or render any service which any board of county commissioners may exercise, perform, or render.” (Emphasis added.) Reference to a joint agency created as an autonomous and independent entity is conspicuously absent in R.C. 307.15(A). Had the General Assembly intended R.C. 307.15(A)(1) to authorize a county and a political subdivision other than a county to form a joint agency, it would have expressly provided that authority. See *Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926). Reference to the formation of a joint agency also is missing from R.C. 9.482.

The similarities between the language of R.C. 307.15(A)(1) and that of R.C. 9.482(B)(1) means that we should construe their respective provisions in the same manner. See *In re C.W.*, 104 Ohio St. 3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, at ¶7 (“[s]tatutes concerning the same subject matter must be construed in *pari materia*”). As in the case of the authority granted under R.C. 307.15(A)(1), we conclude that the authority granted to political subdivisions under R.C. 9.482 does not authorize those political subdivisions to enter into an agreement to create a joint enterprise that exercises the powers and performs the functions that are the subject of the agreement. Therefore, a board of county commissioners may not contract with boards of township trustees and legislative authorities of municipal corporations within the county pursuant to R.C. 9.482 or R.C. 307.15 to form a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county.

The first question also asks whether a statute other than R.C. 9.482 or R.C. 307.15 grants a board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations the power to form such a joint enterprise. A board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations may enter into an agreement to form a regional council of governments pursuant to R.C. Chapter

³ R.C. 307.15(A)(2) provides, in pertinent part:

[R.C. 307.14 to R.C. 307.19], or any agreement authorized by those sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board [of county commissioners], or the possession by a county of any power or function exercised or performed by the contracting municipal corporation, in pursuance of the agreement.

167.⁴ See R.C. 167.01 (authorizing counties, municipal corporations, and townships, among other governmental entities, to agree to form a regional council of governments); see also 2015 Op. Att’y Gen. No. 2015-004, at 2-23 (“[a] regional council of governments is governed, *inter alia*, by its by-laws. By-laws must be adopted designating the officers of the council and their method of selection, creating a governing board that may act for the council, and providing for the conduct of the council’s business”). It is our opinion that a regional council of governments closely resembles the type of joint enterprise described in your letter.

A regional council of governments may, among other things, study governmental problems in the area that are common to two or more members, R.C. 167.03(A)(1); coordinate action among the members of the regional council, R.C. 167.03(A)(2); and promote cooperative agreements and contracts among the regional council’s members, R.C. 167.03(A)(4). A regional council of governments also may:

- (1) Review, evaluate, comment upon, and make recommendations, relative to the planning and programming, and the location, financing, and scheduling of public facility projects within the region and affecting the development of the area;
- (2) Act as an areawide agency to perform comprehensive planning for the programming, locating, financing, and scheduling of public facility projects within the region and affecting the development of the area and for other proposed land development or uses, which projects or uses have public metropolitan wide or interjurisdictional significance; [and]
- (3) Act as an agency for coordinating, based on metropolitan wide comprehensive planning and programming, local public policies, and activities affecting the development of the region or area.

R.C. 167.03(B). A regional council of governments may employ staff and purchase or lease necessary materials and facilities. R.C. 167.05.

A board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations may form a regional council of governments to perform functions related to the demolition of vacant and abandoned buildings and the remediation of other

⁴ A regional council of governments is not an agency, board, or department of county government, and therefore, a county prosecuting attorney is not authorized or required to provide legal advice to the council. R.C. 309.09(A); 2015 Op. Att’y Gen. No. 2015-004, at 2-23 n.1. However, you ask about the authority of the board of county commissioners of Trumbull County to enter an agreement with other political subdivisions for the formation of a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties throughout Trumbull County. Because the formation of a regional council of governments pursuant to R.C. Chapter 167 is a way by which the county commissioners may achieve that goal, it is proper for us to advise you on that subject.

nuisance properties in the county, so long as the functions performed by the regional council come within the delineated powers set forth in R.C. 167.03(A) and (B). To the extent that the political subdivisions forming the regional council intend for the council to perform powers and functions that are not encompassed by R.C. 167.03(A) and (B), a regional council of governments may perform services pursuant to R.C. 167.03(C) or perform functions that the council has been authorized to perform on behalf of a political subdivision pursuant to R.C. 167.08. *See* 2012 Op. Att’y Gen. No. 2012-026, at 2-227.

R.C. 167.03(C) states that a regional council of governments “may, by appropriate action of the governing bodies of the members, perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern.” R.C. 167.08 provides that “[t]he appropriate officials, authorities, boards, or bodies of counties, municipal corporations, townships, ... or other political subdivisions” may contract with the regional council to receive any service from the council, or provide any service to the council. *See* 2012 Op. Att’y Gen. No. 2012-026, at 2-227 (“R.C. 167.03(C) and R.C. 167.08 grant comparable authority and should be read together”). R.C. 167.08 also authorizes a regional council of governments to agree “to perform any function or render any service in behalf of such counties, municipal corporations, townships, ... or other political subdivisions, which such counties, municipal corporations, townships, ... or other political subdivisions may perform or render.” The authority of a regional council of governments to perform a function or service on behalf of a political subdivision pursuant to R.C. 167.03(C) or R.C. 167.08 is limited by the same statutory strictures imposed upon a political subdivision in its performance of that function or service. 1982 Op. Att’y Gen. No. 82-103 (syllabus) (“[w]hen a political subdivision enters into an agreement under R.C. 167.03(C) or 167.08 with a regional council of governments of which it is a member, whereby the regional council of governments assumes certain duties and responsibilities of the member political subdivision, the regional council of governments must comply with all statutory requirements imposed upon the member political subdivision in the performance of such duties and responsibilities”).

Neither R.C. 167.03(C) nor R.C. 167.08 authorizes a regional council of governments to “aggregate the powers of various subdivisions” to “become a multi-jurisdictional entity with powers exceeding those of the individual members.” 1986 Op. Att’y Gen. No. 86-068, at 2-377; *see also* 1990 Op. Att’y Gen. No. 90-012, at 2-52 (“political subdivisions enumerated in R.C. 167.02 may not form, under a regional council of governments, a cooperative agreement under which ... officers of such subdivisions participate in joint activities throughout the entire territory encompassed by the regional council of governments,” when such activities exceed the powers conferred upon those officers by statute); 1986 Op. Att’y Gen. No. 86-084, at 2-474 (“[i]nsofar as a regional council of governments may only undertake those governmental functions that may be performed by its individual members, I conclude that a consortium of counties and municipalities, organized as a regional council of governments pursuant to R.C. Chapter 167, may not establish and operate a multicounty correctional center as otherwise provided in R.C. 307.93”). Importantly, a regional council of governments may “perform only such functions as its member subdivisions are authorized to perform or as contracting political

subdivisions may perform and authorize the council to perform on their behalf.” 1986 Op. Att’y Gen. No. 86-068, at 2-376.

Numerous statutes authorize counties, townships, and municipal corporations to demolish vacant and abandoned buildings and remediate other nuisance properties in a variety of circumstances. *See, e.g.*, R.C. 303.26-.56 (county renewal projects for slum or blighted areas); R.C. 505.06 (board of township trustees may select building nuisances within the unincorporated territory of the township for the abatement of which persons may claim a tax credit); R.C. 505.86 (township’s authority to remove dangerous or insecure buildings); R.C. 505.87 (township’s authority to abate, control, or remove “vegetation, garbage, refuse, and other debris from land in the township”); R.C. 715.26(B) (municipal corporation’s authority to remove “insecure, unsafe, or structurally defective buildings or other structures”); R.C. 715.44(A) (municipal corporation’s authority to abate any nuisance); R.C. 725.01(I) (definition of urban renewal project).⁵ Accordingly, in answer to the first question, a board of county commissioners may enter into an agreement pursuant to R.C. 167.01 with boards of township trustees and legislative authorities of municipal corporations to form a regional council of governments for the purpose of performing services or functions related to the demolition of vacant and abandoned buildings and the remediation of other nuisance properties throughout the county, so long as those services or functions are of a kind or type authorized by R.C. 167.03(A), (B), or (C) or R.C. 167.08. Because we have concluded that the formation of the joint enterprise contemplated by the Trumbull County Board of Commissioners is not permitted under R.C. 9.482 or R.C. 307.15, it is unnecessary for us to answer the second and third questions, which are based upon an assumption that R.C. 9.482 or R.C. 307.15 provides the authority to form the joint enterprise.

Adoption of Countywide Regulations Concerning Maintenance and Demolition

The fourth question asks whether a board of county commissioners may adopt countywide regulations concerning the maintenance and demolition of properties that are within the jurisdiction of the joint enterprise, as well as regulations that require workers to post a bond.⁶ A board of county commissioners is a creature of statute and has only those powers that are expressly provided by statute or that are necessarily implied thereby. *See* 2011 Op. Att’y Gen. No. 2011-030, at 2-243 n.2. A board of county commissioners may adopt local residential building regulations or an existing structures code that addresses the repair and maintenance of structures and the premises of those structures in the *unincorporated* area of the county so long

⁵ In addition to statutory authority, a municipal corporation may engage in nuisance abatement through the adoption and enforcement of local police, sanitary, and other similar regulations pursuant to Ohio Const. art. XVIII, § 3 (conferring upon a municipal corporation “all powers of local self-government”).

⁶ We understand that your use of the term “countywide” means that a resolution adopted by a board of county commissioners will have effect in the incorporated and unincorporated areas of the county.

as the regulations do not conflict with the state residential building code. *See* R.C. 307.37(B)(1)(a)-(b); R.C. 3781.01(B); *see also* 2011 Op. Att’y Gen. No. 2011-030, at 2-245 (“[R.C. 307.37] give[s] 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”). R.C. 307.37(B)(1)(a) states, in pertinent part, that “[n]o local residential building regulation shall 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)(b) authorizes a county’s existing structures code to “govern[] a subject matter not addressed by, and ... not in conflict with, the state residential building code adopted pursuant to [R.C. Chapter 3781].” If a board of county commissioners has adopted an existing structures code and local residential building regulations that apply to a township within the county, a board of township trustees is prohibited from enacting its own existing structures code and local building regulations.⁷ R.C. 505.78(A)(1), (B)(1).

A board of county commissioners may not adopt regulations pursuant to R.C. 307.37 that are effective within incorporated areas of the county. The authority to adopt resolutions or ordinances governing the maintenance and demolition of residential buildings within incorporated areas of the county rests with the legislative authorities of the county’s various municipal corporations. R.C. 715.03; *see, e.g.*, R.C. 715.26(A) (authority of a municipal corporation to “[r]egulate the erection of buildings or other structures and the sanitary condition thereof, the repair of, alteration in, and addition to buildings or other structures”); R.C. 715.26(B) (municipal corporation may “[p]rovide for ... the removal and repair of insecure, unsafe, or structurally defective buildings or other structures”); R.C. 715.29(A) (“[a]ny municipal corporation may ... [r]egulate by ordinance the use, control, repair, and maintenance of buildings used for human occupancy or habitation ... for the purpose of insuring the healthful, safe, and sanitary environment of the occupants thereof”); R.C. 715.29(B) (“[a]ny municipal corporation may ... [c]ompel the owners of [residential] buildings to alter, reconstruct, or modify them, or any room, store, compartment, or part thereof, for the purpose of insuring the healthful, safe, and sanitary environment of the occupants thereof”); 1978 Op. Att’y Gen. No. 78-008, at 2-19 (a municipal corporation has authority to adopt building regulations pursuant to its home rule powers under Ohio Const. art. XVIII, § 3).

Nevertheless, a board of county commissioners and a municipal corporation may achieve consistent building regulations within the county’s unincorporated and incorporated areas by entering into an agreement under R.C. 307.15 for the enforcement of county regulations within the municipal corporation. *Cf.* R.C. 3781.102(B) (“[r]ules adopted by a board of county

⁷ If a township has adopted an existing structures code or local residential building regulations and a board of county commissioners subsequently adopts either of those, the township’s code and regulations are effective for no longer than one year after the county’s code and regulations are effective. R.C. 505.78(A)(2), (B)(2).

commissioners pursuant to this division may be enforced within the unincorporated areas of the county *and within any municipal corporation where the legislative authority of the municipal corporation has contracted with the board for the enforcement of the county rules within the municipal corporation pursuant to [R.C. 307.15]*” (emphasis added).⁸ Therefore, pursuant to R.C. 307.37, a board of county commissioners may adopt local residential building regulations and an existing structures code within the unincorporated areas of the county pursuant to R.C. 307.37, so long as the building regulations and the provisions of the existing structures code do not conflict with the state residential building code. To achieve consistent, uniform standards in the incorporated and unincorporated areas of the county, a board of county commissioners and the legislative authority of a municipal corporation may agree pursuant to R.C. 307.15 that the regulations adopted by the county pursuant to R.C. 307.37 shall be effective and enforced within the municipal corporation.

The fourth question also asks whether a board of county commissioners may adopt countywide regulations that require posting a bond with respect to the demolition of vacant and abandoned buildings or the remediation of other nuisance properties. We presume that you are asking whether a board of county commissioners may require a person or entity that contracts with a member of the joint enterprise to perform services related to the demolition of vacant and abandoned buildings and the remediation of other nuisance properties to post a performance bond. A “performance bond” is “[a] bond given by a surety to ensure the timely performance of a contract.” *Black’s Law Dictionary* 1319 (10th ed. 2014).

Pursuant to R.C. 307.86, subject to certain exceptions, “[a]nything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service [except for the services of certain professionals] ... by or on behalf of the county ... at a cost in excess of fifty thousand dollars ... shall be obtained through competitive bidding.” If the contract is “for the construction, demolition, alteration, repair, or reconstruction of an

⁸ Alternatively, if a county, municipal corporations, and townships enter into an agreement to form a regional council of governments for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county, the county, municipal corporations, and townships may agree pursuant to R.C. 167.03(C) or R.C. 167.08 that the regional council of governments will perform the functions and duties of a county, municipal corporation, or township to adopt and enforce local residential building regulations and an existing structures code within their respective territories. A regional council of governments that enters into a contract with its member subdivisions pursuant to R.C. 167.03(C) or R.C. 167.08 shall comply with the same limitations as apply to the county, townships, and municipal corporations and shall exercise the powers in accordance with statutory requirements applicable to the individual political subdivisions.

improvement, it shall meet the requirements of [R.C. 153.54].” R.C. 307.88(A).⁹ R.C. 153.54 requires a person or entity bidding for a contract with “the state or any political subdivision ... or ... agency thereof” to file a bid guaranty. R.C. 153.54(A).

The bid guaranty required by R.C. 153.54(A) may take one of two forms. The first is a bond that “[p]rovide[s] that, if the bid is accepted, the bidder ... will enter into a proper contract in accordance with the bid, plans, details, and specifications” and that indemnifies the county for all damages incurred by a failure to perform the contract, including the payment of subcontractors, material suppliers, and laborers. R.C. 153.54(B)(1)-(2); *see also* R.C. 153.54(A)(1). The second form that the bid guaranty may take is “[a] certified check, cashier’s check, or letter of credit pursuant to [R.C. Chapter 1305], in accordance with [R.C. 153.54(C)].” R.C. 153.54(A)(2). R.C. 153.54(C)(1) requires that a bid guaranty that is in the form of a certified check, cashier’s check, or letter of credit “be conditioned to provide that if the bid is accepted, the bidder ... will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material.” R.C. 153.54(C)(1) further provides:

If the bidder enters into the contract, the bidder, at the time the contract is entered to [*sic*], shall file a bond for the amount of the contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, and specifications and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor, material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

The bid guaranty required by R.C. 153.54, in either form, is a performance bond. 1990 Op. Att’y Gen. No. 90-051, at 2-212.

R.C. 307.88(B) authorizes a “board of county commissioners, by a unanimous vote of the entire board,” to “permit a contracting authority to exempt a bid from any or all of the

⁹ For the purpose of R.C. 153.54, a “public improvement” is “any construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of a building ... by a public authority.” R.C. 1311.25(A); *see also* R.C. 153.54(J) (“[f]or the purposes of this section ... ‘public improvement’ ... [has] the same meaning[] as in [R.C. 1311.25]”); R.C. 1311.25(B) (for the purpose of R.C. 1311.25, “public authority” includes a county, township, or municipal corporation). Therefore, a contract with a county for the demolition of vacant, abandoned, or other nuisance buildings is a contract for a public improvement as that term is used in R.C. 153.54(A).

requirements of [R.C. 153.54] if the estimated cost is one hundred thousand dollars or less.”¹⁰ A “contracting authority” is “any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or an agency, department, authority, commission, office, or board thereof.” R.C. 307.92.

The provisions of R.C. 153.54, R.C. 307.86, and R.C. 307.88 confer upon a board of county commissioners a certain amount of discretion in determining whether a person bidding for a contract with the county for the demolition of vacant and abandoned buildings and the remediation of other nuisance properties shall file a performance bond. None of these statutes authorize a board of county commissioners to impose bond requirements on contractors bidding on the performance of work for a municipal corporation or township. A board of county commissioners is a creature of statute and may only exercise those powers expressly granted by statute or necessarily implied thereby. 2015 Op. Att’y Gen. No. 2015-034, at 2-334. Accordingly, we conclude that a board of county commissioners may not enact regulations that require a person or entity to post a performance bond upon bidding for or entering into a contract with a municipal corporation or township to perform services related to the demolition of vacant and abandoned buildings and the remediation of other nuisance properties.

The Enforcement of Municipal and Township Building Regulations by a Board of County Commissioners

The fifth question asks whether political subdivisions that create a joint enterprise for the maintenance and demolition of properties in the county may agree to enforce only those regulations that have lawful application in the territory in which a subject property is located.

By agreement of the parties, a board of county commissioners may enforce municipal regulations or township regulations regarding the maintenance and demolition of residential buildings within the territories of municipal corporations or townships. Pursuant to R.C. 307.38(B), a board of county commissioners and the legislative authority of a municipal corporation may agree that the board of county commissioners will enforce the municipal local building regulations or a municipal existing structures code within the territory of the municipal

¹⁰ 1990 Op Att’y Gen. No. 90-051, at 2-213 to 2-214 recognized a conflict between R.C. 307.88 and R.C. 153.54 with respect to contracts that are less than the dollar amount specified in R.C. 307.88. At the time of the opinion, R.C. 307.88 applied to bids in excess of \$10,000. 1990 Op Att’y Gen. No. 90-051, at 2-212. R.C. 153.54, on the other hand, applies to any bid, regardless of amount. 1990 Op Att’y Gen. No. 90-051, at 2-213. The opinion concluded that R.C. 307.88 controls when contracts are less than the dollar amount specified in R.C. 307.88. 1990 Op. Att’y Gen. No. 90-051, at 2-214. R.C. 307.88 is the specific provision and R.C. 153.54 is the general provision. *Id.* Therefore, if the bid for the contract with the county for the demolition of vacant, abandoned, or nuisance housing is less than \$50,000 (the amount that the current version of R.C. 307.88 specifies), the provisions of R.C. 153.54, including the requirement of a performance bond, do not apply.

corporation. Similarly, a board of county commissioners and a board of township trustees may contract with each other for the board of county commissioners “to administer and enforce local residential building regulations or existing structures code in the township.” R.C. 505.75(D)(1). Alternatively, a county, municipal corporations, and townships may agree that their enforcement powers shall be exercised by the regional council of governments. R.C. 167.03(C); R.C. 167.08.

In the absence of those agreements, county, townships, and municipal corporations are authorized to utilize their own personnel to administer and enforce local residential building regulations and existing structures codes that are effective within their respective territories. R.C. 307.37(B)(1)(c) (county local residential building regulations and existing structures code); R.C. 505.73(B) (township existing structures code); R.C. 505.75(C)(1) (township local residential building regulations); R.C. 715.03 (“municipal corporations may provide by ordinance or resolution for the exercise and enforcement of [R.C. 715.01-.67] powers”); R.C. 715.26(B) (“[a]ny municipal corporation may ... [p]rovide for the inspection of buildings”); R.C. 737.02 (“[u]nder the direction of the mayor, the director of public safety shall be the executive head of the ... building departments”).

The Adoption or Amendment of a Building Regulation Requires a Duly Adopted Resolution

The sixth question asks whether an agreement forming a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county may include provisions that impose uniform standards for the demolition and remediation within the enterprise’s jurisdiction. You ask whether such provisions constitute the adoption or amendment of regulations within the territories of each of the member political subdivisions.¹¹

R.C. 307.37(B)(1)(b) and R.C. 505.73(A) authorize a board of county commissioners and a board of township trustees, respectively, to adopt an existing structures code. Each provision expressly requires a board of county commissioners and a board of township trustees, respectively, to adopt an existing structures code by resolution. *See* R.C. 307.37(B)(1)(b) (“[t]he board of county commissioners may, by resolution, adopt, administer, and enforce within the unincorporated area of the county ... an existing structures code”); R.C. 505.73(A) (“[t]he board of township trustees may, by resolution, adopt ... within the unincorporated area of the township an existing structures code”). R.C. 307.37(B)(1)(a) and R.C. 505.75(A)(1) authorize a board of county commissioners and a board of township trustees, respectively, to adopt local residential building regulations. Although R.C. 307.37 and R.C. 505.75 do not expressly require the adoption of a resolution to adopt or amend a local residential building regulation, it is generally understood that the exercise of legislative action by a board of county commissioners or a board

¹¹ Because you have no duty to advise the legislative authority of a municipal corporation as to the procedures it must follow in order to adopt or amend building regulations, we will answer this part of your question with respect to the procedures that a county and township shall employ to adopt or amend building regulations.

of township trustees requires a duly adopted resolution. *See* 1982 Op. Att’y Gen. No. 82-006, at 2-19 (recognizing that “[a] governmental body may be deemed to exercise a legislative function when it promulgates policies, standards, regulations or rules of general application and prospective operation and when the body’s decision is appropriately based on considerations similar to those a legislature could have invoked” and that legislative decisions must be made by ordinance or resolution). Insofar as adopting a building regulation constitutes the promulgation of a policy or standard and the exercise of a legislative function, the adoption or amendment of a building regulation requires a duly adopted resolution by a board of county commissioners or a board of township trustees.¹² Accordingly, a provision that addresses maintenance and demolition standards in an agreement that establishes a joint enterprise for the purpose of demolishing vacant and abandoned buildings and remediating other nuisance properties in the county does not constitute the adoption or amendment of building regulations in each of the member political subdivisions.

Whether a Board of Township Trustees May Impose an Assessment for the Mowing, Maintenance, or Demolition of Real Property

The seventh question asks whether a township that is part of a joint enterprise created to demolish vacant and abandoned buildings and remediate other nuisance properties may impose an assessment against a property owner for mowing, maintaining, or demolishing nuisance properties when the work is done by a volunteer.¹³ R.C. 505.86 and R.C. 505.87 authorize a

¹² Even if a regional council of governments were to adopt or amend a local residential building regulation or an existing structures code on behalf of the county, townships, or municipal corporations, the regional council of governments is required to follow the same procedural requirements that each political subdivision is required to follow. 1982 Op. Att’y Gen. No. 82-103, at 2-283 (“[u]nder R.C. 167.03(C) and 167.08, a regional council of governments may perform functions and duties on behalf of a member political subdivision only within the statutory constraints which define the manner in which that subdivision could perform the same functions and duties”).

¹³ The seventh question asks about the county, townships, and municipal corporations that are part of a joint enterprise. You have no duty to advise a municipal corporation about its authority to impose an assessment for work completed by a volunteer. Further, a board of county commissioners has no authority to mow, maintain, and demolish nuisance properties and to recover the costs thereof by imposing an assessment against the real property. A board of county commissioners is empowered to combat blight and nuisances within the county through a variety of statutory schemes, including, but not limited to, adopting and enforcing local residential building regulations, R.C. 307.37-.40, designating a community improvement corporation as an agent of the county “for the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property in the county,” R.C. 1724.10(A)(2), and undertaking county renewal projects pursuant to R.C. 303.26-.56. *See generally* R.C. 303.26(F) (“[c]ounty renewal project’ may include undertakings and activities of a county in a county

board of township trustees, under certain circumstances, to mow vegetation or to maintain or demolish buildings located on private property in the township. R.C. 505.86(B) addresses the repair or removal of buildings or structures and provides:

A board of township trustees, by resolution, may provide for the removal, repair, or securance of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective by any fire department under contract with the township or by the county building department or other authority responsible under [R.C. Chapter 3781] for the enforcement of building regulations or the performance of building inspections in the township, or buildings or other structures that have been declared to be in a condition dangerous to life or health, or unfit for human habitation by the board of health of the general health district of which the township is a part.

A board of township trustees taking action under R.C. 505.86(B) shall provide at least thirty-days-notice to the parties in interest of the board's intention and that the parties in interest may request a hearing. R.C. 505.86(B),(C). A party in interest may agree to remove, repair, or secure the building. R.C. 505.86(D). If an agreement is not reached and the board of township trustees

renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in a county renewal area, or rehabilitation or conservation in a county renewal area"). None of the foregoing provisions or any other provision in the Revised Code authorizes a board of county commissioners to mow, maintain, and demolish properties and then levy an assessment upon the real property to recover the cost of the mowing, maintenance, or demolition. Authority to mow, maintain, or demolish properties within the county and assess the costs thereof against the property is conferred upon boards of township trustees, municipal legislative authorities, and the boards of health of city or general health districts, among other entities (or, in the case of a charter county, a county health department). *See* R.C. 301.24 (a county may adopt an alternative form of government to create a county health department); R.C. 505.86(B) (a board of township trustees "may provide for the removal, repair, or securance of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective"); R.C. 505.87(A) (a board of township trustees may remove vegetation and other debris from township property when the vegetation and debris constitutes a nuisance); R.C. 715.26(B) (a municipal corporation may remove and repair unsafe or defective buildings); R.C. 3707.01 (a board of health of a city or general health district is charged with the abatement and removal of nuisances); R.C. 3709.22 (a board of health of a city or general health district "may ... provide for the inspection and abatement of nuisances dangerous to public health or comfort"); R.C. Chapter 3767 (nuisances); 1987 Op. Att'y Gen. No. 87-097 (syllabus, paragraph 2) ("[i]n counties which have created a county health department under R.C. 301.24, the county health department has authority to undertake abatement of a nuisance"). Therefore, we address this question only with respect to statutory townships.

provides for the removal or repair of the building, the board may collect the total cost incurred by the township by either (1) certifying the total cost to the county auditor for placement on the tax list and duplicate or (2) recovering the total cost through a civil action. R.C. 505.86(F). For the purpose of R.C. 505.86, “[t]otal cost” is defined as “any costs incurred due to the use of employees, materials, or equipment of the township, any costs arising out of contracts for labor materials, or equipment, and costs of service of notice or publication required under [R.C. 505.86].” R.C. 505.86(A).

R.C. 505.87 addresses the abatement of vegetation and other debris. R.C. 505.87(A) states “[a] board of township trustees may provide for the abatement, control, or removal of vegetation, garbage, refuse, and other debris from land in the township, if the board determines that the owner’s maintenance of that vegetation, garbage, refuse, or other debris constitutes a nuisance.” The board of township trustees shall, at least seven days before taking any action, notify the property owner and any lien-holders that the owner is ordered to abate, control, or remove the vegetation that has been determined to be a nuisance. R.C. 505.87(B)(1). In addition, the board of township trustees shall provide notice that if the owner does not remedy the nuisance, or arrange for the nuisance to be remedied, the board will take the actions necessary to remove or abate the nuisance vegetation, “and any expenses incurred by the board in performing that task shall be entered upon the tax duplicate and become a lien upon the land from the date of entry.” R.C. 505.87(B)(2).

If the owner does not abate the nuisance within the appropriate time, “the board of township trustees shall provide for the abatement, control, or removal and may employ the necessary labor, materials, and equipment to perform the task.” R.C. 505.87(E). A board of township trustees that acts pursuant to R.C. 505.87 is required to make a written report to the county auditor that includes “a proper description of the premises and a statement of all expenses incurred in providing for the abatement, control, or removal of any vegetation, garbage, refuse, or other debris . . . , including the board’s charges for its services, the costs incurred in providing notice, any fees or interest paid to borrow moneys, and the amount paid for labor, materials, and equipment.” R.C. 505.87(F). Expenses incurred by a board of township trustees as a result of taking action under R.C. 505.87(E) are initially paid out of the township general fund. R.C. 505.87(E). Any allowable expenses “shall be entered upon the tax duplicate . . . [as] a lien upon the land from the date of the entry” and “collected as other taxes, . . . returned to the township and placed in the township general fund.” R.C. 505.87(F).

R.C. 505.86 and R.C. 505.87 authorize a board of township trustees to recover the costs of mowing, maintaining, or demolishing a nuisance property by certifying the costs to the county auditor and having those costs entered upon the tax duplicate as a lien upon the land. Neither of these statutes nor any other statute in the Revised Code authorizes a board of township trustees to recover an amount that exceeds the actual cost of the mowing, maintenance, or demolition. A board of township trustees of a statutory township has only those powers granted expressly by statute or by necessary implication. *See* 2002 Op. Att’y Gen. No. 2002-017, at 2-102 (“boards of county commissioners and township trustees are creatures of statute, and thus may exercise only those powers and duties conferred upon them by statute”). Therefore, if the mowing,

maintenance, or demolition is performed by a volunteer and results in no cost to the board of township trustees, the board lacks the authority to impose an assessment for the completed work. *See generally State v. Reed*, Greene App. No. 2008-CA-02, 2009-Ohio-161, ¶ 3 (“R.C. 505.87 ... is ... a civil nuisance abatement statute. It ... contains no criminal penalty”).

The seventh question also asks, if the cost or a penalty may be imposed, whether the moneys collected may be shared among the political subdivisions in proportion to the work performed by each, or whether the moneys may be placed in a joint fund to be used for demolition expenses. We have determined that a board of township trustees may not impose an assessment against real property for the mowing, maintenance, or demolition of real property when the work is completed by a volunteer at no cost to the township. Accordingly, it is unnecessary to address this portion of your question.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Neither R.C. 9.482 nor R.C. 307.15 grants a board of county commissioners authority to contract with boards of township trustees and legislative authorities of municipal corporations to form a joint enterprise to demolish vacant and abandoned buildings and remediate other nuisance properties within the county.
2. Pursuant to R.C. 167.01, a board of county commissioners may form a regional council of governments with boards of township trustees and legislative authorities of municipal corporations within the county for the purpose of performing services or functions related to the demolition of vacant and abandoned buildings and the remediation of other nuisance properties within the county, so long as those services or functions are authorized by R.C. 167.03(A), (B), or (C) or R.C. 167.08.
3. A board of county commissioners may adopt local residential building regulations or an existing structures code pursuant to R.C. 307.37(B) that addresses the repair and maintenance of structures and their premises located in unincorporated areas of the county, provided that the local residential building regulations or existing structures code does not conflict with the state residential building code.
4. A board of county commissioners may enter into an agreement with the legislative authority of a municipal corporation pursuant to R.C. 307.15 for the enforcement of county local residential building regulations or an existing structures code within the boundaries of the municipal corporation.

5. A board of county commissioners may not require a person or entity to post a performance bond upon bidding for or entering into a contract with a municipal corporation or township to perform services related to the demolition of vacant and abandoned buildings or the remediation of other nuisance properties.
6. A board of county commissioners may enforce municipal or township regulations that relate to the maintenance and demolition of residential buildings within the territories of a municipal corporation or township by an agreement with a municipal corporation under R.C. 307.38(B) or by an agreement with a township under R.C. 505.75(D)(1).
7. A provision in an agreement between a board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations to form a joint enterprise for the demolition of vacant and abandoned buildings and the remediation of other nuisance properties that purports to impose uniform demolition and remediation standards in the territories of the political subdivisions forming the joint enterprise does not constitute the adoption or amendment of building regulations in each of the member political subdivisions. The adoption or amendment of a building regulation in a county or township requires a duly adopted resolution by a board of county commissioners or board of township trustees.
8. A board of township trustees may not impose an assessment for mowing, or the maintenance or demolition of real property, when the work is performed by a volunteer and results in no cost to the township.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large, sweeping "M" and a long, trailing "e".

MICHAEL DEWINE
Ohio Attorney General