

OPINION NO. 68-076**Syllabus:**

A county does not become obligated for the expenditure of county funds except as a result of a contract made in conformity with the statutory requirements of Chapters 305 and 307 of the Revised Code, together with the certificate of the county auditor required by Section 5705.41 of the Revised Code.

To: Forrest P. Moore, Hocking County Pros. Atty., Logan, Ohio
By: William B. Saxbe, Attorney General, May 3, 1968

I have before me your request for an opinion regarding the liability of the Hocking County Commissioners to participate in the construction of a county airport with the Hocking County Airport Authority. The airport authority desired to participate in the state airport building program (building of runways) in the amount of \$100,000 and, in fact, did secure a grant subsidy for that amount. An additional sum of approximately \$42,000 was necessary to construct the airport. The source of the excess was to come from the county. You state that the county commissioners

passed a resolution unanimously on June 8, 1967, as follows:

"The Hocking County Commissioners in a regular session on June 8, 1967 do hereby pledge to provide the necessary money to complete the Hocking County Airport in accordance with Engineering plans approved by the Division of Aviation.

"The above pledge is based on the promise of the State of Ohio to provide \$100,000.00 of the cost and the serious efforts of the Hocking County Airport Authority to get the work done at the lowest practical cost."

Thereafter the airport authority, pursuant to open bidding, accepted a bid by a construction company in the amount of \$141,880.22, but could not execute the construction contract because the county commissioners refused or failed to appropriate the amount of \$41,880.22, and the airport authority treasurer could not certify the funds available.

Thereafter the county commissioners on November 30, 1967, passed a resolution with two "yes" votes and one "no" vote, as follows:

"Motion made by Mr. Young that the Airport Authority enter into an agreement with Engle Construction Co., McArthur, Ohio, in the amount of \$141,880.22 to proceed with the construction of an Airport in Hocking County, including the \$100,000.00 Grant from the State of Ohio."

You set out your specific question as follows:

"Based upon the facts set forth above including the action taken by the County Commissioners on two occasions, is the County obligated to provide to the airport authority the additional funds needed for the construction of the airport; that is, the \$41,880.22 that is needed over and above the \$100,000.00 grant that is available from the State of Ohio?"

The Hocking County Airport Authority is, of course, created by act of the county commissioners as specifically provided for in Chapter 308, Revised Code. There is no question of the statutory power of the county commissioners to contract with the airport authority regarding acquisition, maintenance, or operation of the airport and to pay the agreed portion of the expense thereof. Sections 307.20 and 717.01 (X) of the Revised Code. Nor is there any question of the power of the airport authority to enter into such a contract with the county. Section 308.06 of the Revised Code.

The case of City of Wellston v. Morgan, 65 Ohio St. 219, is a leading case expressing the Ohio law of contracts by public bodies. The court, as reviewed in the annotation 84 A.L.R. 936, at page 952, held that while the view has been held that the com-

mon law rule that municipalities are liable the same as individuals to pay as upon an implied promise, it has no application in Ohio, since the statute fully covers and provides the manner and only manner, in which a municipality may enter into a contract, agreement, or obligation; any other manner of entering into an obligation would be contrary to the provisions of the statute and void. There can, therefore, be no implied contract agreement or obligation against a municipality, and no implied liability. This same law is applicable to counties as to municipalities. Buchanan Bridge Co. v. Campbell, et al., 60 Ohio St. 406. The syllabus of this case reads:

"A contract made by county commissioners for the purchase and erection of a bridge in violation or disregard of the statutes on that subject, is void, and no recovery can be had against the county for the value of such bridge. Courts will leave the parties to such unlawful transaction where they have placed themselves, and will refuse to grant relief to either party."

Statutory provisions contained in Chapters 305 and 307 of the Revised Code set out a number of the statutory requirements for a valid obligation to arise binding upon the county commissioners and upon the county.

An additional requirement is provided by Section 5705.41, Revised Code:

"No subdivision or taxing unit shall:

"* * *(A) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void * * *"

(Emphasis added.)

The Ohio Supreme Court in the first syllabus of State v. Kuhner, 107 Ohio St. 406, reads as follows:

"1. The provision of Section 5660, General Code, that no contract or obligation involving the expenditure of money may be entered into by the public officials there designated unless the officer named first certifies that the money required is in the treasury to the credit of the fund from which it is to be drawn is mandatory, and the making of such certificate is a prerequisite to the execution of a valid contract, but it is not essential to the validity of such contract that the certificate be recorded."

In conclusion, it thus appears the board of county commissioners is not bound by any agreement unless these precise statutory requirements are complied with.

I am, therefore, of the opinion, and so hold, that a county does not become obligated for the expenditure of county funds except as a result of a contract made in conformity with the statutory requirements of Chapters 305 and 307 of the Revised Code, together with the certificate of the county auditor required by Section 5705.41 of the Revised Code.