

OPINION NO. 91-012**Syllabus:**

Pursuant to R.C. 307.15, a municipal legislative authority that enters into a contract with a board of county commissioners to manage and operate a county sewer district established under R.C. Chapter 6117 must exercise the specific powers and duties that pertain thereto in accordance with the terms of such statutory provisions as apply to the exercise of those powers and duties by the board of county commissioners. In such circumstance the award of contracts by the municipal legislative authority for capital improvement, assessment, and maintenance and repair projects of the county sewer district must comply with the pertinent competitive bidding procedures and requirements set forth in R.C. Chapter 153, R.C. 307.86-.92, and R.C. 6117.27 as would apply to the award of such contracts by the board of county commissioners.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, March 11, 1991

You have requested an opinion regarding competitive bidding requirements that apply to contracts for capital improvement, assessment, and maintenance and repair projects in the case of a county sewer district that, pursuant to R.C. 307.15, is managed and operated by a municipal corporation. According to your letter the board of county commissioners of Hamilton County established a county sewer district in accordance with the pertinent provisions of R.C. Chapter 6117. See R.C. 6117.01 ("[f]or the purpose of preserving and promoting the public health and welfare, boards of county commissioners may by resolution lay out, establish, and maintain one or more sewer districts within their respective counties, outside of municipal corporations"); 1987 Op. Att'y Gen. No. 87-083; 1986 Op. Att'y Gen. No. 86-087; 1985 Op. Att'y Gen. No. 85-016. Subsequently, the board of county commissioners, pursuant to the authorizations that appear in R.C. 307.15, entered into a contract with the City of Cincinnati wherein the city agreed to manage and operate the foregoing county sewer district. In that regard R.C. 307.15 provides, in part, that a board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, and such legislative authority may enter into an agreement with a board of county commissioners, whereby the municipal legislative authority "undertakes, and is authorized by the board, to exercise any power, perform any function, or render any service, in behalf of the county or the board, which the county or the board may exercise, perform, or render." R.C. 307.15 further states that, upon the execution of such an agreement and within the limitations therein prescribed, the municipal legislative authority may "exercise the same powers as the county possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the county directly." See generally 1988 Op. Att'y Gen. No. 88-039; 1986 Op. Att'y Gen. No. 86-084. Insofar as the City of Cincinnati has, pursuant to R.C. 307.15, agreed to manage and operate the county sewer district for Hamilton County, you wish to know whether contracts awarded by the city for capital improvement, assessment, and maintenance and repair projects with respect thereto are subject to the competitive bidding procedures and requirements set forth in R.C. Chapter 153, R.C. 307.86-.92, and

R.C. 6117.27 that are otherwise applicable to the award of such contracts by a board of county commissioners.¹

My research has not disclosed any Ohio court decision that addresses your precise question. In 1986 Op. Att'y Gen. No. 86-012, however, my predecessor considered a similar issue within the context of a prospective agreement under R.C. 307.15 between a board of county commissioners and a board of trustees of a township free public library. In Op. No. 86-012 the question was asked whether a board of county commissioners and a board of trustees of a township free public library could jointly entertain bids for the construction of a capital improvement to the library. The county had received a grant from the federal government to fund the cost of the improvement in question, and the library trustees indicated that they desired to augment the amount received from the federal government with money from the library's building fund. One condition of the federal grant, however, was that the county act as the bidding agency for the use of those funds. In order to avoid the duplication of costs attendant upon the separate bidding by the board of county commissioners and the board of library trustees of each part of the improvement, those two bodies proposed to jointly seek bids upon the capital improvement construction contract.

Upon a review of those provisions in R.C. Chapter 3375 (libraries) that pertain to a township free public library and the powers conferred upon boards of library trustees generally, *see* R.C. 3375.09-.11; R.C. 3375.32-.41, Op. No. 86-012 concluded that those statutes granted no authority to the board of trustees of a township free public library to act in concert with a board of county commissioners to jointly bid a contract for the construction of a capital improvement to the township library, *id.* at 2-57. As an alternative method by which their particular objectives might be achieved, Op. No. 86-012 suggested that the board of county commissioners and the board of library trustees enter into an agreement, as

¹ R.C. Chapter 153 sets forth a comprehensive scheme of various procedural requirements that govern the award of contracts for the construction, reconstruction, alteration, improvement, and repair of state buildings, county buildings, and other public improvements. In certain circumstances, the bidding of such contracts on a competitive basis, followed by the award thereof to the lowest and best bidder, is included among those requirements. *See, e.g.,* R.C. 153.08; R.C. 153.26; R.C. 153.52. As pertains here, R.C. 153.12-.14 and R.C. 153.50-.571 enumerate requirements that apply to construction, improvement, and repair contracts that are awarded by, *inter alia*, a county or the county contracting authorities therein specified.

Subject to certain exceptions, R.C. 307.86-.92 impose competitive bidding requirements with respect to purchases or leases of products or services (including construction, improvement, and repair services) by or on behalf of a county or a county contracting authority, as defined in R.C. 307.92, at a cost in excess of ten thousand dollars. R.C. 307.86. *See also* R.C. 307.86(A)-(F) (describing those instances in which the foregoing competitive bidding requirements do not apply); R.C. 307.87-.91 (notice and bidding procedures that are to be followed whenever competitive bidding is required by R.C. 307.86); R.C. 307.92 (as used in R.C. 307.86-.91, "contracting authority" means any "board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof").

Finally, R.C. 6117.27 provides that contracts for construction awarded by a board of county commissioners in conjunction with a county sewer district are subject to the terms of R.C. 307.86-.92.

For the purpose of this opinion I shall presume that the contracts that are the focus of your inquiry, if awarded by a board of county commissioners directly, would be subject to the foregoing competitive bidding procedures and requirements.

authorized by R.C. 307.15,² whereby the board of county commissioners would exercise the contracting powers of the library trustees on their behalf, thus resulting in an arrangement in which only the county would bid on the entire project, *id.* at 2-58. As part of that agreement the library trustees would also transfer to the county the money from the library building fund that they had intended to contribute for the capital improvement's construction. Op. No. 86-012 also expressed the view that the language of R.C. 307.15 would require the board of county commissioners to comply with such competitive bidding requirements as would have applied to the award of the construction contract by the board of library trustees:

R.C. 3375.41 sets forth the procedure that a board of library trustees must follow for the bidding and letting of contracts over fifteen thousand dollars. In light of R.C. 3375.41, if the cost of the improvement will exceed fifteen thousand dollars, the library trustees must comply with the mandates of this section. Therefore, *pursuant to R.C. 307.15, the board of county commissioners, acting on behalf of the board of library trustees, must also comply with the requirements of R.C. 3375.41.* (Emphasis added.)

Id. at 2-58

I concur in my predecessor's assessment that a board of county commissioners that enters into an agreement under R.C. 307.15 with a board of library trustees in order to solicit, on the board's behalf, bids for the construction of a capital improvement must, in conjunction therewith, follow the competitive bidding requirements that appear in R.C. 3375.41. In addition, it is also my view that the reasoning of Op. No. 86-012 and the language of R.C. 307.15 support the correlative principle that a municipal legislative authority that, pursuant to contract, assumes responsibility for undertaking and performing a particular governmental function or activity that would otherwise have been accomplished by a board of county commissioners is bound to comply with whatever competitive bidding procedures and requirements, if any, that would apply to the board of county commissioners in effecting that same function or activity. To reiterate, R.C. 307.15 states unambiguously that the legislative authority of a municipal corporation that enters into an agreement with a board of county commissioners under that section

may exercise the same powers as the county possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the county directly.

Reasonably implicit in the excerpt just quoted is the further requirement that the municipal legislative authority exercise the subject powers in accordance with the terms of such other statutory provisions as may specifically direct or govern the exercise of those powers by a board of county commissioners. Indeed, such an interpretation is both compatible and consistent with the unmistakable intent of the General Assembly, as revealed by the express language of R.C. 307.15, that a municipal legislative authority that contracts thereunder to exercise on behalf of a county certain statutory powers thereof is to exercise those powers "*as amply as such powers are possessed and exercised by the county directly.*" (Emphasis added.) Cf. *generally* 1989 Op. Att'y Gen. No. 89-082 at 2-385 n. 2 ("R.C. 307.15 neither confers upon the governmental bodies therein specified any authority or

² The first paragraph of R.C. 307.15 states, in part, that the board of county commissioners may enter into an agreement with the legislative authority of any library district, and such legislative authority may enter into agreements with the board, "whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render."

power that has not already been granted or conferred elsewhere in the Revised Code, nor expands or enlarges upon such authority as has been granted by other provisions in the Revised Code").

It is, therefore, my opinion, and you are advised that pursuant to R.C. 307.15, a municipal legislative authority that enters into a contract with a board of county commissioners to manage and operate a county sewer district established under R.C. Chapter 6117 must exercise the specific powers and duties that pertain thereto in accordance with the terms of such statutory provisions as apply to the exercise of those powers and duties by the board of county commissioners. In such circumstance the award of contracts by the municipal legislative authority for capital improvement, assessment, and maintenance and repair projects of the county sewer district must comply with the pertinent competitive bidding procedures and requirements set forth in R.C. Chapter 153, R.C. 307.86-92, and R.C. 6117.27 as would apply to the award of such contracts by the board of county commissioners.