

**OPINION NO. 83-058****Syllabus:**

1. A board of county commissioners is not required to enter into an agreement for the creation of a county-wide organization for civil defense under R.C. 5915.07.
2. Pursuant to R.C. 5915.06, a board of county commissioners is required to appoint a director of disaster services to coordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of the board and in a manner not inconsistent with rules promulgated by the Governor. The board has discretion in determining whether to provide any other local civil defense under R.C. 5915.06.

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**To: John J. Plough, Portage County Prosecuting Attorney, Ravenna, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, October 11, 1983**

I have before me your request for an opinion on the question whether "Disaster Services as such, is a mandated service which must be provided in any event by the [County] Commissioners or whether a County such as Portage County could opt to do away with its Disaster Services Agency entirely." You have explained that Portage County presently has a county-wide disaster services agency, operated by a board which includes the various local officials specified in R.C. 5915.07, but that there is no county-wide agreement providing for payment of the expenses of the agency by any of the local subdivisions. As a result, the disaster services agency operation is funded entirely by the board of county commissioners. You have indicated, further, that no local subdivision in Portage County provides for its own civil defense office under R.C. 5915.06.

As your request indicates, R.C. 5915.07 authorizes the establishment of a county-wide organization for civil defense. It states, in relevant part:

The board of county commissioners of any county and the legislative authority of all or a majority of the other political subdivisions, including the municipal corporation having the largest population, within such county may enter into an agreement establishing a county-wide organization for civil defense in accordance with such regulations as are promulgated by the governor. A director of disaster services who shall have the responsibility for coordinating the organization, administration, and operation of such county-wide civil defense organization shall be appointed in accordance with and shall be subject to the direction and control prescribed by the regulations promulgated by the governor. (Emphasis added.)

Pursuant to this provision, the board of commissioners of a county and the legislative authorities of all or a majority of the political subdivisions within the county (including the municipal corporation having the largest population) may enter into an agreement establishing a county-wide organization for civil defense, in accordance with such regulations as are promulgated by the Governor.

The decision as to whether to establish a county-wide organization for civil defense appears to be purely discretionary. R.C. 5915.07 states that the relevant bodies "may" enter into such an agreement. The word "may," used in a statute, is ordinarily construed to mean that an act is discretionary, rather than mandatory. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage"); Dennison v. Dennison, 165 Ohio St. 146, 149, 134 N.E.2d 574, 576 (1956) ("[o]rdinarily, the word, 'shall,' is a mandatory one, whereas 'may' denotes the granting of discretion"). There is nothing in R.C. 5915.07 which suggests that the creation of a county-wide organization for civil defense is required. In fact, the provision that "all or a majority" of the political subdivisions in the county may enter into the agreement indicates that each political subdivision has an option to decide whether it wishes to enter into such an agreement. (Of course, a county-wide organization for civil defense cannot be established unless its establishment is agreed to by the required bodies (the county and the municipal corporation having the largest population) and the required minimum number of bodies (a majority of the political subdivisions other than the county).)

It is true that R.C. 5915.07 provides that a "director of disaster services who shall have the responsibility for coordinating the organization, administration, and operation of such county-wide civil defense organization shall be appointed" (emphasis added) under rules promulgated by the Governor. While, under the rule of statutory construction outlined above, this portion of the statute is mandatory, it is clear that this provision does not come into play until a county-wide organization for civil defense has been established under the first portion of the section. See State ex rel. Wendling Brothers Co. v. Board of Education, 127 Ohio St. 336, 188 N.E. 566 (1933) (concluding that "may" is discretionary when used in a phrase relating to the decision of a board of education to issue bonds and that "shall" is mandatory as consistently employed with reference to steps to be taken after it has been determined that bonds should be issued). It would be impossible for a director of disaster services to have the responsibility for coordinating the organization, administration, and operation of a county-wide civil defense organization unless such an organization had been established.

I conclude, therefore, that a board of county commissioners is not required to enter into an agreement for the creation of a county-wide organization for civil

<sup>1</sup> As I noted in 1983 Op. Att'y Gen. No. 83-057, note 3, I am aware of no current rules pertaining to this subject.

defense under R.C. 5915.07. There remains the question whether the county commissioners have a duty to provide a disaster services agency pursuant to R.C. 5915.06.

R.C. 5915.06 states:

Each political subdivision of this state may establish local civil defense in accordance with the rules promulgated by the governor. Each county and municipality shall have a director of disaster services who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. He shall coordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of such board and chief executive and not inconsistent with rules promulgated by the governor.<sup>2</sup> (Emphasis and footnote added.)

The first sentence of R.C. 5915.06, which provides that political subdivisions "may" establish local defense, is clearly discretionary. See Dorrian v. Scioto Conservancy District; Dennison v. Dennison. It would, thus, appear that no political subdivision is required to provide disaster services.

The following sentence of R.C. 5915.06 raises some questions concerning such a conclusion. It states that "[e]ach county. . . shall have a director of disaster services. . ." (emphasis added). As noted above, use of the word "shall" is ordinarily construed as mandatory, unless the context indicates otherwise. It is not clear from the language of R.C. 5915.06 that a county must have a director of disaster services only if it chooses to establish local civil defense. Rather, the final sentence of R.C. 5915.06 indicates that the county director of disaster services "shall coordinate the organization, administration, and operation of local agencies for civil defense" (emphasis added), and it is clear that there may be some local agencies for civil defense even if the county should not choose to establish such an agency. See R.C. 5915.01(A) (defining "[a]gency" to include "any office, department, division, bureau, board, commission or authority of the state or of a political subdivision thereof, including volunteer agencies"); R.C. 5915.01(F) (defining "[p]olitical subdivision" to include "a county, township, city, or village"). Compare R.C. 5915.06 with 5915.07.

I conclude, therefore, that while R.C. 5915.06 provides political subdivisions, including counties, with an option to determine whether they wish to establish local civil defense, R.C. 5915.06 makes it mandatory that each county have a director of disaster services. See generally Wachendorf v. Shaver, 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948) ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"). Such a director shall be appointed by the board of county commissioners and shall "coordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of such board," and in a manner not inconsistent with any rules promulgated by the Governor.

This interpretation is supported by the history of R.C. 5915.06. The following language appeared at G.C. 5295:

Each county and incorporated municipality of this state is hereby authorized to establish a local organization for civil defense in accordance with such regulations as shall be promulgated by the governor. Each local organization for civil defense shall have a director who shall be appointed by the county commissioners for the counties and by the chief executive of the incorporated municipalities, and who shall have direct responsibility for the organization, administration and operation of such local organization

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<sup>2</sup> As I noted in 1983 Op. Att'y Gen. No. 83-057, notes 3 and 4, I am aware of no current rules pertaining to this subject. See note 1, supra.

for civil defense, subject to the direction and control of such county commissioners and chief executive and not inconsistent with regulations promulgated by the governor. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to regulations promulgated by the governor. (Emphasis added.)

1949-1950 Ohio Laws 209, 210-11 (Am. S.B. 259, eff. May 26, 1949). This statutory language clearly contemplated that the county commissioners would appoint a director only after it established a local organization for civil defense. The director was to be director of that local organization.

The next version of the statute, adopted by 1953-1954 Ohio Laws 419, 421-22 (Am. Sub. S.B. 138, eff. Oct. 16, 1953), appeared at R.C. 5915.06, and read in relevant part as follows:

Each county or other political subdivision of this state may establish a local organization for civil defense in accordance with the regulations promulgated by the governor. Each local organization for civil defense shall have a director who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. He shall have direct responsibility for the organization, administration, and operation of such local organization for civil defense, subject to the direction and control of such board and chief executive and not inconsistent with regulations promulgated by the governor. (Emphasis added.)

R.C. 5915.01(F), as adopted at the same time, defined "political subdivision" to include a county, township, city, or village. One of my predecessors, construing this version of the statute in 1955 Op. Att'y Gen. No. 5562, p. 322, concluded that it authorized a township to establish a local organization for civil defense, but did not specify how a director for such an organization should be selected. He found it implied that the township trustees could determine in their discretion, as an incident of creation of such an organization, how the director was to be chosen. With respect to the provision that the county commissioners should appoint a director for a county organization for civil defense, he concluded that such language provided a restriction on the manner in which the county commissioners might create such an organization.

R.C. 5915.06 was amended again by 1961 Ohio Laws 1395, 1396 (Am. H.B. 432, eff. Oct. 5, 1961), to read as follows:

Each county and municipality of this state may establish local civil defense in accordance with the regulations promulgated by the governor. Each county and municipality shall have a director of civil defense who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. He shall co-ordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of such board and chief executive and not inconsistent with regulations promulgated by the governor. (Emphasis added.)

It was this amendment which provided that each county (rather than each local organization for civil defense) should have a director of civil defense and which gave the director of civil defense the duty of coordinating the organization, administration, and operation of local agencies for civil defense. The fact that the director was now connected with the county, rather than with the county's local organization, and was involved with activities of more than a single organization indicates that meaning of the statute had changed.

The most recent amendment to R.C. 5915.06, adopted by H.B. 126, 113th Gen. A. (1979) (eff. June 20, 1979), modified R.C. 5915.06 to permit all political

subdivisions (defined in R.C. 5915.01 as including townships) to establish local civil defense. It did not change the provisions pertaining to the appointment of directors of disaster services<sup>3</sup> and their duties.

On the basis of the foregoing, I conclude that it is statutorily mandated that a county have a director of disaster services who serves at the direction and control of the board of county commissioners in coordinating the activities of local agencies for civil defense. See 1962 Op. Att'y Gen. No. 2840, p. 144. Clearly the duties of such a director may vary widely, depending upon the direction which he is given in a particular county and on the number and types of local agencies for civil defense existing in that county. The only limitation on his activities is that they may not be inconsistent with any rules that may be promulgated by the Governor. I conclude, further, that a county has discretion in determining whether to provide any other local civil defense under R.C. 5915.06.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. A board of county commissioners is not required to enter into an agreement for the creation of a county-wide organization for civil defense under R.C. 5915.07.
2. Pursuant to R.C. 5915.06, a board of county commissioners is required to appoint a director of disaster services to coordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of the board and in a manner not inconsistent with rules promulgated by the Governor. The board has discretion in determining whether to provide any other local civil defense under R.C. 5915.06.

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<sup>3</sup> In 1973, R.C. 5915.06 was amended to change director of "civil defense" to director of "disaster services." 1973 Ohio Laws 888, 891 (Am. S.B. 218, eff. Oct. 16, 1973). The amendment reflects the fact that the term "[c]ivil defense," as defined in R.C. 5915.01(C) (also amended in 1973 by Am. S.B. 218), includes "activities and measures designed or undertaken to minimize the effects upon the civilian population" which would be caused either by an attack or by any other sort of disaster, "including all natural and man-made disasters." The terms "civil defense" and "disaster services" thus appear to be used interchangeably in R.C. Chapter 5915. See R.C. 5915.01(G) (defining "[n]atural and man-made disasters"); R.C. 5915.02 (the Disaster Services Agency within the Adjutant General's Department is in charge of planning, organizing, and maintaining "civil defense adequate to the needs of the state"); R.C. 5915.03 (the Disaster Services Advisory Council advises the Governor and the State Director of Disaster Services on all matters pertaining to civil defense); 1964 Op. Att'y Gen. No. 1532, p. 2-432; 1962 Op. Att'y Gen. No. 3069, p. 456 (civil defense includes meeting problems that derive from non-military disasters).