

OPINION NO. 75-070**Syllabus:**

There is no express or necessarily implied authority under either R.C. 307.051 or R.C. 5705.191, for a county to enter into contracts for the provision of emergency medical services.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, September 30, 1975

I have before me your request for my opinion, which reads as follows:

"Does paragraph (U) of Section 5705.19 of the Revised Code authorizing tax levys for 'emergency medical service', allow a board of county commissioners to enter into contracts for such services with or without a special

levy, in the absence of a statutory authorization to do so?"

From the materials which you have furnished me, the "emergency medical service" in question is the Regional Emergency Medical Services of Northwest Ohio, Inc., a non-profit organization. It is clear that the emergency medical service involves a highly trained and skilled group of personnel who would respond to emergencies in the county area. These individuals would be equipped with sophisticated means to handle emergencies, including telephone communications between an individual ambulance unit and physicians. It appears that the "emergency medical service" would render very thorough care to a victim at the scene of an emergency. Such care would be much more extensive than that rendered by ordinary ambulance personnel who may lack the sophisticated training and equipment that the emergency medical service personnel would possess.

The issue raised here is generated because the legislature provided certain taxing powers relative to both ambulance service and emergency medical service when it amended R.C. 5705.19 in 1974, but has not provided the county commissioners express statutory authority to contract for both. Instead there is only express statutory authority for contracts concerning ambulance service. R.C. 307.051. This difference in treatment between ambulance service and emergency medical service is clear from the statutory provisions themselves. In pertinent part R.C. 5705.19 and R.C. 307.051 provide as follows:

R.C. 5705.19

"The taxing authority of any subdivision at any time and in any year, by vote of two thirds of all the members of said body, may declare by resolution and certify such resolution to the board of elections not less than sixty days before the election upon which it will be voted, that the amount of taxes which will be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

". . . .

"(U) For providing ambulance service, emergency medical service, or both."
(Emphasis added.)

R.C. 307.051

"A board of county commissioners may provide ambulance service or may enter into a contract with one or more counties, townships, municipal corporations, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, or private ambulance owners are located within or without the state, in order to obtain ambulance service, or to obtain additional ambulance service in times of emergency. Such contracts shall not restrict the operation of

other ambulance services in the county."
(Emphasis added.)

Nowhere has the legislature expressly granted county commissioners the authority to contract for emergency medical services. For that reason the issue narrows to whether such contractual authority may be necessarily implied from the taxing authority contained in R.C. 5705.19(U), because it is clear that without express statutory authorization county commissioners may do only that which is necessarily implied from relevant statutory provisions. State, ex rel. Clarke v. Cook, 103 Ohio St. 465 (1921); State, ex rel. Locher v. Menning, 95 Ohio St. 97 (1916); Gorman v. Heuck, 41 Ohio App. 453 (1931); 1973 Op. Att'y Gen. No. 73-103; 1973 Op. Att'y Gen. No. 73-090; 1971 Op. Att'y Gen. No. 71-092. Further, such powers must be strictly construed. 1974 Op. Att'y Gen. No. 74-015.

It seems clear that an emergency medical service would benefit the county in that it would provide highly trained personnel who would be capable of handling many types of emergency situations. However, as my predecessor noted in 1931 Op. Att'y Gen. No. 2887, merely because the purpose of the county commissioners is praiseworthy is not sufficient. He stated:

"The county commissioners are not analogous to a City Council or the state General Assembly, --they do not have general legislative powers-- and their administrative functions are, as previously set forth, such only as are conferred by statute together with those necessarily implied as incident thereto.

"Though this survey [for new systems and layout of county offices] by experts may be for a most laudable purpose, the question remains, whether or not the commissioners have the power to effectuate such purpose. It is a legal purpose, not a laudable purpose, that justifies an expenditure of the taxpayers' money."

I must conclude that authority to enter into contracts for the providing of an emergency medical service is not necessarily implied by R.C. 307.051 because an ambulance service is, and has been legislatively addressed as, separate and distinct from an emergency medical service. Compare R.C. 5705.19(U) and R.C. 307.051, quoted above.

I am not unmindful that some basic emergency medical treatment would be rendered in connection with the ambulance service contemplated by R.C. 5705.19(U). It must, however, be noted that R.C. 5705.19 was amended to include Section (U), effective August 30, 1974, while R.C. 307.051 became effective June 4, 1968. Thus, in the more recent of the two provisions, the legislature has recognized a distinction between an ambulance service and an emergency medical service. If the legislature had desired to allow county commissioners to enter into contracts for emergency medical service, it could have easily so amended R.C. 307.051, but it did not.

Accordingly, the additional tax funding which is available for both ambulance service and emergency medical service may be used for the county's direct operation of these services, but

where the county commissioners seek to have the services performed otherwise it is only the ambulance services which may be obtained by contract.

In specific answer to your question it is my opinion, and you are so advised that there is no express or necessarily implied authority under either R.C. 307.051 or R.C. 5705.191, for a county to enter into contracts for the provision of emergency medical service.