

OPINION NO. 85-059

Syllabus:

A board of county commissioners which is providing ambulance and emergency medical services pursuant to R.C. 307.05 may not exclude a portion of the county from the provision of such services.

To: J. David Webb, Paulding County Prosecuting Attorney, Paulding, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 17, 1985

You have requested my opinion regarding whether a board of county commissioners may provide emergency medical services for only a portion of the county.

R.C. 307.05 empowers a board of county commissioners to provide ambulance or emergency medical services, by providing as follows:

A board of county commissioners may provide ambulance service or emergency medical service, or may enter into a contract with one or more counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners are located within or without the state, in order to obtain ambulance service, to obtain additional ambulance service in times of emergency, or to obtain emergency medical services. Such contracts shall not be entered into with a public agency that receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance services or emergency medical services in the county unless the public agency is awarded the contract after submitting the lowest and best bid to the board of county commissioners.

When such service is provided by the board, the service may be administered by the board, by the county sheriff, or by another county officer or employee designated by the board. All rules, including the determining of reasonable rates, necessary for the establishment, operation, and maintenance of such service shall be adopted by the board.

A contract for such service shall include the terms, conditions, and stipulations as agreed to by the parties to the contract. It may provide for a fixed annual charge to be paid at the times agreed upon and stipulated in the contract, or for compensation based upon a stipulated price for each run, call, or emergency or the number of persons or pieces of apparatus employed, or the elapsed time of service required in such run, call, or emergency, or any combination thereof.

See 1979 Op. Atty Gen. No. 79-042 (concluding that the language of R.C. 307.05 is permissive, rather than mandatory, and that a county is not required to provide emergency medical services). R.C. 307.05 thus allows a board of county commissioners either to provide directly ambulance or emergency medical services or to contract with another entity for the provision of such services.

You have stated in your letter of request that in 1979 the voters of Paulding County passed a tax levy in order to fund the provision of ambulance and emergency medical services. See R.C. 5705.19(U). After the passage of the tax levy, the county commissioners entered into contracts with six villages within the county whereby the entire county was divided into six territories and each village agreed to provide emergency medical services for one of such territories. After passage of a renewal levy in 1984, see R.C. 5705.25, one of the villages which had been providing emergency medical services refused to sign a new contract.

Your question is whether the county may enter into contracts with five of the villages to provide emergency medical services for their territories and yet have no such arrangement with the remaining village, or with any other entity, to provide protection to the territory for which the sixth village had been providing emergency medical services. Under this scheme, a portion of the county would thus receive no county-supported emergency medical services.

A board of county commissioners is a creature of statute and has only those powers which are expressly granted by statute or which may be necessarily implied therefrom. *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Thus, it must be clear that the power to provide emergency medical services in only certain portions of the county is within the statutory authority of the board of county commissioners. R.C. 307.05 does not expressly provide that the board of county commissioners may determine that emergency medical services will be rendered to some areas of the county and not to others. Moreover, I believe that R.C. 307.05, at least implicitly, requires that if a board of county commissioners provides emergency medical services, then such services must be provided for the entire county.

Although I am unaware of any cases or opinions interpreting R.C. 307.05 with regard to your question, there are opinions which have interpreted statutes similar to R.C. 307.05 which prove helpful in analyzing your question.

R.C. 9.60 authorizes a township to contract for fire protection and R.C. 505.37 provides that a township may purchase equipment for firefighting purposes or unite with another political subdivision for the purpose of purchasing, maintaining, and operating firefighting equipment. In interpreting the predecessors of these statutes, a former Attorney General stated in 1940 Op. Att'y Gen. No. 2129, vol. I, p. 325, 327:

If a board of township trustees enters into a contract with a city for fire protection, the funds which the township would expend thereunder would necessarily be derived from taxation on all the taxable property in the township and the board of township trustees is certainly not authorized to use public funds obtained by taxation on all the property in the township to contract for fire protection for a portion only of the township, even though such portion may contain water mains and fire hydrants threaded to fit the fire fighting apparatus of the municipality with which the contract is made.

See 1966 Op. Att'y Gen. No. 66-114 at 2-206 ("[w]hen fire protection is available in a township. . . pursuant to Section 505.37. . . it must be furnished to all on an equal basis"). 1944 Op. Att'y Gen. No. 6682, p. 53, 55-6 (interpreting the predecessor to R.C. 9.60 as contemplating that fire service rendered pursuant to contract with a municipality must be for the protection of the entire subdivision contracting for it, and not for one or more properties located within the subdivision; "[w]hile the township could properly pay out of its general funds for protection furnished to the township, it would be quite a different matter if it undertook to pay out of such general funds for protection for only a part of the township"); 1943 Op. Att'y Gen. No. 5798, p. 44, 49 (funds which are raised by taxation and placed in the general fund of the township "are produced by a levy upon all the property in the township, and it would not be permissible to spend these funds for the purpose of either establishing a fire department in a portion of the township or contracting with a municipality for fire protection for such portion of the township").

R.C. 505.43 authorizes townships to contract for police protection. 1971 Op. Att'y Gen. No. 71-045 concluded that R.C. 505.43 (formerly R.C. 505.441) contemplates that any contract entered into by a township will be for the protection of the entire township. Accord, 1977 Op. Att'y Gen. No. 77-097.

I find the foregoing opinions to be persuasive, and conclude that when a board of county commissioners undertakes to provide ambulance and emergency medical services pursuant to R.C. 307.05, such services must be provided to the entire county.

My conclusion is further supported by the fact that where the legislature has intended that a political subdivision be permitted to provide a particular service to only a portion of a political subdivision, it has expressly so provided. See, e.g., R.C. 505.37(C) ("[t]he board of township trustees of any township may . . . create a fire district of any portions of the township that it considers necessary"); R.C. 505.371 (a joint fire district may be created by boards of township trustees and legislative authorities of municipal corporations and shall comprise "the municipal corporations and all or any portions of the townships as are mutually agreed upon"); R.C. 505.48 (township trustees may, by resolution, create a township police district "comprised of all or a portion of the unincorporated territory of the township as the resolution may specify"). See also Op. No. 77-097; Op. No. 71-045; 1944 Op. No. 6682; 1943 Op. No. 5798. R.C. 505.71 provides in part:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining such townships, or the boards of township trustees of two or more townships, or the legislative authority of two or more municipal corporations, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint ambulance district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon. A district so created shall be given a name different from the name of any participating township or municipal corporation.

I am unaware, however, of any statute authorizing a board of county commissioners to provide emergency medical services to only a portion of the county.

As noted above, a county is not required in the first instance to provide emergency medical services under R.C. 307.05. Further, R.C. 5705.19 provides that a tax levied under that section for the purpose of providing ambulance and emergency medical services may be terminated if the county commissioners determine that the levy is no longer necessary. Thus, the county may decide to discontinue the provision of emergency medical services. My conclusion that the board of county commissioners lacks authority to exclude a portion of the county from the provision of emergency medical services does not necessarily require, however, that the county discontinue the provision of services. R.C. 307.05 does not specify only one method whereby the county may provide emergency medical services. If one village continues to refuse to sign the contract to provide services to a portion of the county, the board of county commissioners may, pursuant to R.C. 307.05, contract with other governmental or private entities in order to provide service to that area, or the county may devise a method to provide service to the entire county other than by dividing the county into six territories.¹

¹ I note that the county has no power to levy a tax upon only a portion of the property within the county and then provide services only to that portion of the county taxed. Ohio Const. art. XII, §2 requires that, "[l] and improvements thereon shall be taxed by uniform rule according to value. . . ." This provision requires that a tax be levied uniformly throughout the district of a taxing authority. See State ex rel. Speeth v. Carney, 163 Ohio St. 159, 126 N.E.2d 449 (1955); Gigandet v. Brewer, 134 Ohio St. 86, 15 N.E.2d 964 (1938). Thus, absent statutory authority allowing the creation of a tax district which includes an area less than the entire county, the board of county commissioners may not tax only a portion of the county with the intention of then supplying emergency medical services to only that portion of the county which is taxed. See 1985 Op. Att'y Gen. No. 85-017.

I am aware that 1956 Op. Att'y Gen. No. 6541, p. 344 concluded that Ohio Const. art. XII, §2 is not violated by the use of funds derived from a township tax levy for the purpose of obtaining fire hydrants and a water supply for firefighting purposes even though such hydrants and water supply would benefit only a portion of the township. My conclusion that the county commissioners may not exclude a portion of the county from the provision of ambulance and emergency medical services, however, is based upon a lack of statutory authority rather than upon a conflict with Ohio Const. art. XII, §2.

It is, therefore, my opinion, and you are hereby advised, that a board of county commissioners which is providing ambulance and emergency medical services pursuant to R.C. 307.05 may not exclude a portion of the county from the provision of such services.