

**OPINION NO. 75-084****Syllabus:**

1. A single county mental health and retardation board may establish a schedule of fringe benefits for its employees pursuant to the powers and duties of the board and its executive director to fix employee compensation, as provided for in R.C. 340.03(H) and R.C. 340.04(E). (Third syllabus paragraph of 1975 Op. Att'y Gen. No. 75-014 approved and followed; third syllabus paragraph of 1969 Op. Att'y Gen. No. 69-045 clarified.)

2. A single county mental health and retardation board may enter into lease agreements for facilities without the approval of the county commissioners. Neither a single nor a joint county community mental health and retardation board is under the direct operational control of the board(s) of county commissioners. (Second syllabus paragraph of 1975 Op. Att'y Gen. No. 75-014 approved and followed.)

3. Where a single county community mental health and retardation board determines that attendance of its member or employees at a business conference will be in furtherance of the board's duties, no county commissioner approval for attendance is required.

4. A single county community mental health and retardation board may, pursuant to R.C. 340.03(H) and R.C. 340.04(E), employ the audit, accounting and consulting services of an accounting firm.

5. A single county community mental health and retardation board may purchase liability insurance for its members or employees because there is specific statutory authority for such a purchase provided for in R.C. 340.11.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 8, 1975**

I have before me your request for my opinion on several questions pertaining to single county community boards of

mental health and retardation established pursuant to R.C. Chapter 340. Specifically you ask:

"1. May a single county board of mental health and retardation, otherwise referred to as a '648' board, lawfully establish a schedule of fringe benefits, which schedule would be separate from the benefits which are accorded regular county employees?

"2. May a single county board of mental health and retardation lawfully enter into lease agreements for community mental health facilities or mental retardation facilities without approval of the Board of County Commissioners?

"3. May a single county board of mental health and retardation lawfully authorize attendance of its members or employees at business conferences without the prior approval of the Board of County Commissioners?

"4. May a single county board of mental health and retardation lawfully enter into a contract with an accounting firm in order to obtain audit and accounting services?

"5. May a single county board of mental health and retardation lawfully purchase liability insurance for board members and employees and pay for such insurance from public funds?"

At the outset it is necessary to point out a distinction between community mental health and retardation boards which are established pursuant to R.C. Chapter 340 and county boards of mental retardation which are provided for in R.C. Chapter 5126. It is the community boards which have a general planning and coordinating function with respect to all mental health and retardation facilities (including programs and services) in a designated area (from one to three counties). On the other hand it is the county boards which are limited to direct supervision of a county's facilities, programs and services for special training of the mentally retarded.

Your questions concern only the community boards. As to these community boards it must be pointed out that they may be of two sizes. A community board may operate in one or more than one county--giving rise, respectively, to single-county and joint-county community mental health and retardation boards. Whether a community board is a single or joint county board depends upon the population. According to R.C. 340.01 community mental health and retardation service districts must be established by any county or combination of counties having a population of at least fifty thousand. Thus where a county has a fifty thousand population base a single county board arises, and a joint county board arises where the fifty thousand base is comprised of the population in more than one county.

Your questions are all directed toward the powers of the single county board only. However, inasmuch as both single and joint county boards are established under R.C. 340 and inasmuch as prior opinions of this office have answered certain similar questions with respect to a joint county board, it is clear that disposition of your questions first requires a consideration of what distinction there may be between a single and a joint county board.

R.C. 340.03 sets out the powers and duties of community mental health and retardation boards. It provides that such a board shall:

"(A) Review and evaluate community mental health and retardation services and facilities and submit to the director of mental health and mental retardation, the board or boards of county commissioners, and the executive director of the program, recommendations for reimbursement from state funds as authorized by section 5119.62 of the Revised Code and for the provision of needed additional services and facilities with special reference to the state comprehensive mental health plan;

"(B) Coordinate the planning for community mental health and retardation facilities, services, and programs seeking state reimbursement;

"(C) Receive, compile, and transmit to the department of mental health and mental retardation applications for state reimbursement;

"(D) Promote, arrange, and implement working agreements with social agencies, both public and private, and with educational and judicial agencies;

"(E) Enter into contracts with state hospitals, other public agencies, and with private or voluntary hospitals and other private or voluntary non-profit agencies for the provision of mental health and mental retardation service and facilities;

"(F) Appoint a qualified mental health specialist or qualified mental health administrator to serve as the executive director of the board on a full-time or part-time basis. If the executive director is neither a psychiatrist nor a pediatrician, the board shall designate a qualified doctor of medicine to assume responsibility for the medical activities of the board.

"(G) Prescribe the duties of the executive director and review his performance thereof;

"(H) Approve salary schedules for employees and consultants in agencies and facilities maintained and operated, in whole or in part, or by contract, under the direction of the board;

"(I) Recruit and promote local financial support for mental health and retardation programs from private and public sources;

"(J) In the event a needed service cannot be provided by an existing public or private agency, directly operate a mental health or mental retardation facility until such time as this responsibility can be assumed by another agency.

"(K) Prescribe fees to be charged for services, not to exceed the cost of the service. Physicians and mental health professionals shall be allowed to follow and assist in the care of the patients under the direction of the director of the facility.

"(L) Establish the operating procedures of the board and submit an annual report of the programs under the jurisdiction of the board, including a fiscal accounting, to the board of county commissioners.

"(M) Establish such rules and regulations or standards and perform such other duties as may be necessary or proper to carry out Chapter 340. of the Revised Code."

From a review of the foregoing it is evident that as to the functional powers and duties, there is no distinction between a single and a joint county board. There are other distinctions, but they do not relate to the direct operations of a community mental health and retardation board. (See R.C. 340.01 which distinguishes between the two in establishment, and allows for withdrawal by one county from a joint county district; R.C. 340.02 which provides for different total number of members on a single and a joint board; R.C. 340.10 which designates--differently for the two sizes of boards--which county treasurer is to be custodian of allocated funds; and R.C. 5705.01 which grants a joint county board the authority to levy taxes while a single county board must rely on allocated funds.)

In my predecessor's opinion, 1969 Op. Att'y Gen. No. 69-045, it was concluded that the employees of a single county board could be considered "county employees" for the purposes of R.C. 305.171. The effect of that conclusion was to allow county commissioners to purchase group insurance for employees of the single county board. The first question you have posed in this request asks whether a single county board may, independent of the county commissioners, provide its employees with fringe benefits (such as group insurance). The issue of your apparent concern is that if the employees of a single county board are "county employees" for one purpose (purchase group insurance) then should they not be "county employees" for many if not all other purchase-of-fringe-benefit purposes. The conclusion suggested by this issue is that a single county board may only provide such fringe benefits to its employees as are directly provided by the county commissioners. Such a conclusion, however, would abrogate the operational powers of a single county board as legislatively provided for in R.C. 340.03(H) wherein the board (single or joint county) shall "approve the salary schedules for employees." It would also run afoul of the duty of the boards' executive director to "employ and

remove from office such employees and consultants as may be necessary for the work of the board, and fix their compensation." R.C. 340.04(E).

As I concluded in 1975 Op. Att'y Gen. No. 74-014, the term "compensation" is properly defined broadly so as to include payment of fringe benefits. See 1972 Op. Att'y Gen. No. 72-059; 1961 Op. Att'y Gen. No. 2171; 1941 Op. Att'y Gen. No. 4685; 1931 Op. Att'y Gen. No. 3382; 1928 Op. Att'y Gen. No. 2055. Accordingly, it is clear from R.C. 340.03(H) and R.C. 340.04(E) that any community mental health and retardation board has the power to include as compensation for its employees a series of fringe benefits such as group medical and hospitalization insurance. The fact that the employees of a single county board may also be provided such benefits by the county commissioners does not preclude a single county board from supplementing the benefits, or from establishing them in the absence of provisions by the county commissioners.

Your second question asks whether a single county board may enter into certain leases without approval of the county commissioners. This question, like the first, suggests again that a single county community health and retardation board is under the direct control of the board of county commissioners, though it is clear that a joint county board is not.

In 1975 Op. Att'y Gen. No. 75-014 I concluded and stated in the second syllabus:

"A joint county mental health and retardation board may, pursuant to R.C. 340.03(E), enter into contracts for the lease of facilities. Contracts and expenditures made by a board pursuant to R.C. 340.03 need not be approved by the county commissioners of participating counties."

In regard to that conclusion I stated in that opinion that a different conclusion might be warranted in the case of a single county board. The reason for that statement came from the fact that Opinion No. 75-014, supra, dealt directly and only with joint county boards, and the statement served to emphasize that consideration of possible distinction between single and joint county boards was specifically not undertaken. Insofar as that statement has led to confusion it should be considered stricken from that opinion. As discussed above, the questions you have posed in this request have provided the opportunity to analyze the issue of distinctions between single and joint county boards, and I conclude that as to the general operational powers and duties of both sizes of boards (R.C. 340.03 and R.C. 340.04) they are the same. Accordingly, it is appropriate to state that neither a single nor a joint county community mental health and retardation board is a "county board" or a "county commission" subject to direct supervisory control of the board or boards of county commissioners. Specifically, the conclusion stated in the second syllabus of Opinion No. 74-015, supra, is equally applicable to both a single and a joint county board.

Your third question asks whether a single county board may authorize attendance of its employees at business conferences without approval of the county commissioners. From the fore-

going discussion, principally based on R.C. 340.03 and R.C. 340.04, it is now clear that as agencies created by the general assembly, both single and joint county boards of community mental health and retardation are designed to operate independently of county commissioner control. There are the fiscal controls of the assigned county treasurer and, through him, of the appropriate county auditor; however, these fiscal controls do not and were not intended to translate into operational controls of the boards by the county commissioners. Accordingly, where a single or joint county board determines that its purposes will be advanced by having members and/or employees attend business conferences, there is no need for approval from the county commissioners. As a practical matter, of course, the county commissioners in the county of a single county board will exercise indirect control. This, however, is a function of the legislative dependence a single board has to county funding, which is not the case with a joint county board. See R.C. 5705.01.

Your fourth question concerns the ability of a single county board to manage its fiscal affairs. It could be argued that because a single county board has its county treasurer as custodian of allocated state and county funds, the single county board would be spending funds on something not necessary were it to employ the services of an accounting firm. As to this I again direct your attention to the express authority of the board -- to be exercised by its executive director -- which is set out in R.C. 340.04(E). The executive director shall:

"(E) Employ and remove from office such employees and consultants as may be necessary for the work of the board, and fix their compensation . . . ."

(Emphasis added.)

This makes it apparent that any board has the power to employ an accounting firm where such services are considered necessary. Further, it may be particularly advisable for a board to enlist the consulting services of an accountant. When one realizes that money management is one of the principle functions of a community mental health and retardation board, and recognizes that in times of economic cutbacks budgetary projections may be required at frequent intervals, one finds it difficult to conclude that accounting services are anything but necessary.

Your last question concerns the purchase of liability insurance for the members and employees of a community mental health and retardation board. As to this I note that the legislature recently provided specific authorization for such purchases by enacting R.C. 340.11.

In specific response to each of the questions you have posed it is, then, my opinion and you are so advised that:

1. A single county mental health and retardation board may establish a schedule of fringe benefits for its employees pursuant to the powers and duties of the board and its executive director to fix employee compensation, as provided for in R.C. 340.03(H) and R.C. 340.04(E). (Third syllabus paragraph of 1975 Op. Att'y Gen No. 75-014 approved and followed; third syllabus paragraph of 1969 Op. Att'y Gen. No. 69-045 clarified.)

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3. Where a single county community mental health and retardation board determines that attendance of its member or employees at a business conference will be in furtherance of the board's duties, no county commissioner approval for attendance is required.

4. A single county community mental health and retardation board may, pursuant to R.C. 340.03(H) and R.C. 340.04(E), employ the audit, accounting and consulting services of an accounting firm.

5. A single county community mental health and retardation board may purchase liability insurance for its members or employees because there is specific statutory authority for such a purchase provided for in R.C. 340.11.