

OPINION NO. 83-057

Syllabus:

1. A county-wide organization for civil defense created pursuant to R.C. 5915.07 constitutes an entity separate from the several political subdivisions which join in its creation, and any such

political subdivision may be charged with the obligations created by the organization only to the extent that such subdivision has committed itself by entering into the organization.

2. A county civil defense organization created under R.C. 5915.06 does not automatically succeed to obligations of a county-wide civil defense organization created under R.C. 5915.07.
3. Participation by a civil defense organization or political subdivision in a program for the loan of federal vehicles for civil defense purposes is strictly voluntary, and there is no requirement that such loans be extended.
4. Any county, township, city, or village may, under R.C. 5915.12, accept a loan of equipment for civil defense purposes.

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 11, 1983

I have before me your request for an opinion on several questions involving the responsibilities of various political subdivisions which were members of a county-wide disaster services organization. As you have described the situation, the Stark County-Wide Disaster Services Organization was established under R.C. 5915.07 by the Board of Stark County Commissioners and the several cities, villages, and townships in Stark County, and was subsequently terminated. Your questions involve various loan agreements which were executed prior to the termination of the Organization. You have asked:

1. Is the Board of Stark County Commissioners which has established a county disaster service office under Section 5915.06 legally responsible for the loan agreements executed by the Stark County-Wide Disaster Services organization formed under Section 5915.07 but which has been terminated, and is the Board of County Commissioners required to execute the extensions to those agreements?
2. Can the Board of Stark County Commissioners legally execute the loan agreements for vehicles obtained under the original agreements which are in the possession of Stark County or any of its departments?
3. Are the political subdivisions other than Stark County which have possession of the vehicles obtained under the loan agreements legally responsible for the execution of the extension of such agreements?
4. Do the members of the Executive Committee of the former Stark County-Wide Disaster Services Organization have any legal duty to execute the extensions of the loan agreements for the vehicles?

Let me note, first, that the situation you have described is a complicated one. It is my understanding that a number of disputes of various natures have arisen, and it is clear that, in order to make a final determination of liability or responsibility of the various parties involved, it may be necessary to make certain factual determinations. This office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary. Thus, in addressing your questions, I shall not attempt to make final determinations where issues of fact are involved, but will focus, instead, on the relevant principles of law, which you may apply to various factual situations as appropriate.

The first aspect of your first question concerns the legal responsibility of the Board of Stark County Commissioners for certain loan agreements. The loan

agreements provided for the loan of vehicles by the federal government to local subdivisions for civil defense purposes. The sample loan agreements you have provided were designed for signature by three persons—the United States Defense Civil Preparedness Agency, the State of Ohio, and a political subdivision. They define the state and the political subdivision, jointly and severally, as the second party, called the Contributions Project Applicant. You have indicated that the entity entering into the agreements as political subdivision was the Stark County-Wide Disaster Services Organization, and I shall assume that to be the case, for purposes of this opinion. You have further informed me that, since the termination of the Stark County-Wide Disaster Services Organization, the Board of Stark County Commissioners has created a county civil defense organization under R.C. 5915.06. You have asked, first, whether the Board of Stark County Commissioners is legally responsible for the loan agreements executed by the now-defunct Stark County-Wide Disaster Services Organization.

The general legal principles applicable to this situation were discussed by one of my predecessors in 1954 Op. Att'y Gen. No. 4224, p. 460. That opinion concerned a regional organization for civil defense and the question whether, if such an organization ended up with a deficit, a member political subdivision could be charged with any portion of such deficit. The opinion concluded:

A regional organization for civil defense constitutes an entity separate from the several political subdivisions which have joined in its creation, and such political subdivisions may not be charged with the obligation created by such organization except to the extent to which they have been committed by such agreement to meet a proportionate share of the organization's operating expense.

1954 Op. No. 4224 (syllabus, paragraph 3).

A regional organization for civil defense is created pursuant to R.C. 5915.07, the same section which authorizes the creation of a county-wide organization for civil defense,² and the conclusions reached in 1954 Op. No. 4224 are equally

¹ There may be a question of fact concerning the parties to these agreements. You have indicated that the Organization began to function circa 1976 but that the resolution of organization was not passed by the county commissioners until October 11, 1979; the sample applications and agreements you have provided are dated 1975 through 1979. Further, the applicant/recipient is variously listed on the forms as "Stark County Disaster Services," "Stark County Disaster Services Agency," and "County of Stark." The individuals signing on behalf of the local subdivision are variously described as "Dep. Dir. Stark Co. Disaster Serv.," "Disaster Services Agency County Director/Coordinator," "Deputy Director," "Dep. Director Stark Co. DSA," and "Director."

There may also be some question concerning the authority of a county-wide civil defense organization to enter into a contract for the loan of property. See note 10, *infra*.

² R.C. 5915.07 states:

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

applicable to a county-wide organization such as the Stark County-Wide Disaster Services Organization. See generally 1951 Op. Att'y Gen. No. 231, p. 86 (recommending adoption of statutory provisions authorizing the creation of a single county-wide civil defense organization as a separate political entity). It follows, therefore, that the Organization constituted an entity separate from the several political subdivisions which joined in its creation (including the Board of Stark County Commissioners) and that such political subdivisions may not be charged with the obligations created by the Organization except to the extent to which such subdivisions are committed by agreement or applicable provision of law. See R.C. 5915.11 (authorizing political subdivisions to "make appropriations for the payment of the expenses of its local activities for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to [R.C. 5915.07]"). See generally 1955 Op. Att'y Gen. No. 5562, p. 322 (township may make an appropriation for its proper proportion of the expense of a county-wide civil defense organization to which it is a party).

Assuming, then, that the loan agreements with which you are concerned were executed on behalf of the Organization, I find that the Stark County Board of Commissioners has only such responsibility for the agreements as the board committed itself to by entering into the Organization.

You have provided a copy of the agreement establishing the Organization. That agreement, in paragraphs 4 and 7, establishes a Disaster Services Executive Committee and gives it responsibility for the "general direction" of the Organization and for carrying out the provisions of the agreement. With respect to the obligations of participating subdivisions, the agreement states, in paragraph 9, at page 4:

Each participating political sub-division hereto agrees to pay into the "Stark County Disaster Services Fund" promptly upon demand and invoice therefor, the amount assessed against it by the Executive Committee for said services performed and to be performed as hereinbefore provided, and to do and perform all and singular, the obligations herein assumed.

I am aware of no provision of the agreement or formal action by the Executive Committee of the Organization which defines the respective responsibilities of the various subdivisions. Similarly, I am aware of no regulation by the Governor which defines such responsibilities.

control prescribed by the regulations promulgated by the governor.

Two or more counties that have established a county-wide organization for civil defense pursuant to this section may, with the consent of the legislative authorities of all or a majority of the political subdivisions of each county involved, including the largest municipal corporation in each county, enter into an agreement in writing establishing a regional organization or authority for civil defense in accordance with such regulations as are promulgated by the governor.

³ R.C. 5915.07 makes reference to establishing a county-wide organization for civil defense "in accordance with such regulations as are promulgated by the governor." R.C. 5915.05 states:

The governor shall promulgate and enforce, and when necessary he may amend or rescind the regulations with respect to the civil defense of the state for the purpose of providing a defense for its people against enemy action, or other disaster. Such regulations shall become effective upon being filed in the office of the secretary of state and thereupon shall have the

Absent a provision of law specifying how a particular duty is to be carried out, it is assumed that it may be performed in any reasonable manner. See, e.g., Jewett v. Valley Ry. Co., 34 Ohio St. 601, 608 (1878). Thus, the Stark County Board of Commissioners would, under its agreement to participate in the Organization, be responsible for such assessments as the Executive Committee might reasonably impose upon the Board.

It appears that there may be some question of fact concerning the current status of the Stark County-Wide Disaster Services Organization. You have stated that the agreement establishing the Organization has been terminated, but you have also indicated that members of the Executive Committee have remained in office pending the final resolution of the affairs of the Organization. The agreement establishing the Organization provides for its termination, but contains no provisions governing the winding up of its affairs. It is clear, however, that the Stark County Board of Commissioners, as a participant in the Organization, will have whatever responsibilities flow from such participation, whether they be assessments by the Executive Committee or other obligations lawfully imposed in the termination of the Organization. Such responsibilities may, of course, include obligations reasonably implied from the fact of membership in the Organization. It must be presumed that the members will, as a group, meet all obligations of the body which they created. If their agreement does not expressly provide for allocation of all such obligations, authority to make a reasonable allocation must be implied.

Another aspect of your concern is the question whether the county civil defense organization, created by the Stark County Board of Commissioners under R.C. 5915.06 following the termination of the Stark County-Wide Disaster Services Organization, succeeds to the obligations of the Organization. R.C. 5915.06 authorizes each political subdivision, see R.C. 5915.01(F), to establish local civil defense, in accordance with rules promulgated by the Governor,⁴ and provides for a

effect of law until amended or rescinded. They shall be made available for public inspection at the headquarters of the state, and at such other places and during such reasonable hours as fixed by the governor.

No current regulations promulgated under this provision are on file with the Secretary of State. It is my understanding that civil defense regulations under R.C. Chapter 5915 were most recently promulgated under date of March 25, 1966, and filed with the Secretary of State on June 9, 1966, but that such regulations ceased to be of effect because they were not filed through the Legislative Reference Bureau pursuant to subsequent legislation. See 1975-1976 Ohio Laws, Part II, 2399 (Am. Sub. H.B. 317, eff. Sept. 30, 1976) (requiring the publication of the rules of state agencies and providing that certain existing rules shall cease to be of effect unless promulgated as provided therein); 1977-1978 Ohio Laws, Part I, 1749 (Sub. H.B. 25, eff. Nov. 4, 1977) (amending R.C. 111.15 to define "rule" to include "any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency" and to define "agency" as follows: "'Agency' means any governmental entity of the state and includes but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or general and technical college. 'Agency' does not include the general assembly or any court"; Section 3 (uncodified) provides that rules included within the broadened definition of "rule" shall cease to be effective if not filed as provided in R.C. 111.15 within 120 days of the effective date of the act). See generally R.C. 103.05(B)(2) (providing that the Ohio Administrative Code "[p] resumptively [establishes] the rules of all agencies adopting rules under section 111.15, 4141.14, 5703.14, or Chapter 119. of the Revised Code that are in effect on the day of its initial publication").

⁴ I am aware of no current rules governing such activity. See note 3, supra.

county to appoint a director of disaster services. The establishment of local civil defense by a county under this section is, however, strictly a county activity, rather than a joint undertaking of several political subdivisions. See, e.g., 1962 Op. Att'y Gen. No. 2840, p. 1414 (county director of civil defense under R.C. 5915.06 is a county officer). See generally R.C. 5915.11; 1954 Op. No. 4224; 1954 Op. Att'y Gen. No. 3683, p. 164; 1951 Op. No. 231. The establishment of civil defense under this section is, therefore, an operation completely separate from a county-wide organization established under R.C. 5951.07. See generally 1954 Op. No. 4224. While the two bodies may carry out similar functions, I am aware of no provision or principle of law which would impose upon a county operation under R.C. 5915.06 obligations incurred by a county-wide organization under R.C. 5915.07.

In response to the first portion of your first question, I conclude, generally, that, assuming that the loan agreements in question were executed by the Stark County-Wide Disaster Services Organization, the Stark County Board of Commissioners, as one of several subdivisions participating in the Organization, has only such responsibility for the loan agreements as may be imposed upon it as a participant in the Organization; it does not automatically succeed to all obligations of the Organization.

The second portion of your first question and your remaining questions concern the duty, authority, or responsibility of various subdivisions to execute extensions to the loan agreements in question. You have described the circumstances surrounding those agreements as follows:

During the term of its existence, the Directors of the Stark County-Wide Disaster Services Organization signed loan agreements for utility trucks (jeeps), cargo trucks, fire trucks, a military ambulance, two-semi-tractor trailers, two buses and several automobiles. These vehicles were obtained as excess property from the United States Government at various military depots through the Department of Defense and the Ohio Disaster Services Agency. . . . The vehicles were obtained for use by the several subdivisions which were members of the county-wide organization. The titles to the vehicles remained in the United States of America. A copy of Chapter 6 of the Federal Assistance Handbook CPF 1-3, dated December 1976 under which the loan was made is enclosed.⁵ At the termination of the Stark County-Wide Disaster Services Organization on December 29, 1981, the several subdivisions retained the vehicles. A survey of the 32 vehicles in question still in the possession of the county, cities, villages, and townships indicates that one or more of the vehicles have been damaged and are beyond repair, some of the vehicles have been cannibalized for parts for other vehicles, some vehicles are in need of repair and some vehicles are in good condition and in use.

The Disaster Services Agency of the Adjutant General's Department has now requested the Board of Stark County Commissioners or the director of the county agency to sign extensions of these loan agreements even though the county has possession of only a few vehicles. . . . (Footnote added.)

⁵ Chapter 6 of the Federal Assistance Handbook CPG 1-3 (1976), which you have provided, indicates, in Section 6.1 e. at 6-1, that loans described therein are "in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 355. . . ; the Federal Civil Defense Act of 1950, as amended; other applicable Federal laws; applicable regulations of the General Services Administration including the Federal Property Management Regulations, 41 CFR 101-43320;" and DCPA regulations 32 C.F.R. Part 1801, Contributions for Civil Defense Equipment (now 44 C.F.R. Part 301) and 32 C.F.R. Part 1811, Non-discrimination in Federally Assisted Programs of the Defense Civil Preparedness Agency (now 44 C.F.R. Part 307).

see generally R.C. 125.84 (providing that the Department of Administrative Services, "[i]n conformance with the 'Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended,' similar or related federal property disposal acts of congress," and R.C. 125.84 to 125.90 shall assist in making surplus federal property available to eligible bodies within the state, including "duly authorized local tax-supported civil defense organizations"; prior to July 1, 1983, this function was delegated to the State Department of Education, see Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983)).

Let me note, first, that I am aware of no requirement of law that any political subdivision enter into loan agreements or extensions of the sort here under consideration. Participation in the federal plan for loaning property appears to be completely discretionary. In fact, the sample loan agreements which you have supplied provide, in paragraph 8, for early termination upon written notice by either party, with return of the property to the federal government. Thus, in response to the second portion of your first question, I conclude that there is no requirement that the Stark County Board of Commissioners execute the extensions to loan agreements for federal vehicles.

⁶ As noted above, the second party consists of the State of Ohio and the political subdivision, jointly and severally. I am, however, aware of no provision of law which would authorize the State to require a political subdivision to participate in the loan program. See generally R.C. 5915.02 (providing that the Adjutant General "shall coordinate all activities of all agencies. . .for civil defense within the state").

⁷ A concern underlying your questions appears to be not only which body may—or must—execute extension agreements for the vehicle loans but which body will bear ultimate liability for any damage done to the vehicles. With respect to the responsibility of the various parties for damage suffered by the vehicles, the sample loan agreements you have provided state:

6. Custody and Responsibility. Ownership of the property shall remain in the Government, with the Contributions Project Applicant receiving possession and having custody. The Contributions Project Applicant shall be responsible for the proper care, maintenance, and utilization of the property, and shall maintain custody and control in all cases, and shall report to DCPA, forthwith, any loss, damage, or destruction of the property. The Contributions Project Applicant shall be responsible for return of the property to the Government at the point of delivery indicated on the inventory (Attachment No. 2) in as good condition as when loaned, reasonable wear and tear excepted, at no expense to the Government. This includes, without limitation, the cost of handling, identification, care, protection, operation, maintenance, and repair or replacement of the property. However, the State shall not be responsible for any loss, damage, or destruction of the property which arises out of causes beyond the control of the State, its agents and employees and without negligence and willful misconduct on the part of the State, its agents and employees. Such causes include, but are not limited to acts of God and sole negligence on the part of the Political Subdivision, its agents and employees. Further, the Political Subdivision shall not be responsible for any loss, damage, or destruction of the property which arises out of causes beyond the control of the Political Subdivision, its agents and employees and without negligence and willful misconduct on the part of the Political Subdivision, its agents and employees. Such causes include, but are not limited to, acts of God and sole negligence on the part of the State, its agents and employees. (Emphasis added.)

See Federal Assistance Handbook CPG 1-3, Section 6.5 d. at 6-4 (1976) ("Responsibility. In general, the State shall be responsible for the proper

Of course, if no loan extension agreements are executed, either by the Stark County Board of Commissioners or another political subdivision or civil defense organization, the provisions of the initial loan agreements which govern the return of the vehicles may take effect. See note 7, supra.

Your second question is whether the Stark County Board of Commissioners may legally execute the loan agreements for vehicles obtained under the original agreements which are in the possession of Stark County or any of its departments. R.C. 5915.12 authorizes any political subdivision to accept a loan of equipment for purposes of civil defense. It states:

care, maintenance and utilization of the property and return of the property to the Federal Government at the point of delivery in as good condition as when loaned, reasonable wear and tear excepted, and at no expense to the Federal Government"). See generally R.C. 5915.10 (setting forth certain exemptions from liability for injury, death, or damage resulting from civil defense operations).

⁸ Section 6.2 of the Federal Assistance Handbook CPG 1-3 (1976), under which the loans were made, states in division e. at 6-2 to 6-3:

Although equipment is loaned only to eligible civil defense organizations, consistent with the procedures of the State and, where applicable, political subdivisions, possession of loaned property may be transferred upon the written approval of the State or local civil defense directors, as appropriate, to other agencies of Government having civil defense functions for purposes of maintenance and utilization. Use by individuals or private entities, for other than civil defense purposes is prohibited. (Emphasis added.)

⁹ It is my understanding that, pursuant to Act of Dec. 22, 1982, Pub. L. No. 97-380, 50 App. U.S.C.A. §2251 note (Supp. 1983), the federal government has instituted a program for transferring to various state and local governments property which was previously loaned for civil defense purposes. Public Law 97-380 states:

That (a) all Federal personal property which—

(A) was transferred by a component of the Department of Defense to the Defense Civil Preparedness Agency by July 15, 1979,

(B) is, on the date of enactment of this Act, on loan to a State or a State and local government jointly as a result of a written loan agreement executed by such Agency, and

(C) was transferred with the functions and property of such Agency to the Federal Emergency Management Agency,

shall be disposed of in accordance with subsection (b).

(b) Whenever the Director of the Federal Emergency Management Agency certifies that property described in subsection (a) is being used by the State or local government holding such property for a purpose consistent with the purpose for which the property was furnished, the Administrator of General Services shall transfer title to such property to the appropriate State or local government.

This language provides for transfer of the title to property to a state or local government where the state or state and local government executed a written loan agreement and certain conditions are met. It is clear that, if the applicable requirements of this provision are satisfied, it may not be necessary to return particular vehicles to the federal government.

When any person, firm, or corporation offers to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the state or the subdivision may accept such offer and upon acceptance, may authorize any officer of the state or of the subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or subdivision.

R.C. 5915.01(F) defines "[p]olitical subdivision," as used in R.C. Chapter 5915, to include a county, township, city, or village.

It is clear, therefore, that Stark County may enter into agreements for the loan of vehicles for civil defense purposes, assuming, of course, that the proposed lender finds it eligible. I can see no reason why this authority does not extend to extension agreements for vehicles which are in the possession of the county or its departments.

Your third question is whether political subdivisions other than Stark County which have possession of vehicles obtained under the loan agreements are legally responsible for the execution of the extensions of such agreements. As I noted above, it does not appear that there is a legal requirement that extension agreements be signed; rather, the loans might simply be terminated in accordance with the provisions of the original agreement and applicable law. If, however, a township, city, or village should wish to enter into an agreement to extend the loan of a vehicle initially acquired through the Organization, it would have the authority under R.C. 5915.12 to do so. Again, it would, of course, be necessary that the lender find the particular political subdivision eligible.

Your fourth question is whether members of the Executive Committee of the former Stark County-Wide Disaster Services Organization have a legal duty to execute the extensions of the loan agreements for the vehicles. Again, as noted above, I am aware of no legal obligation on the part of any entity to enter into a loan extension agreement. Thus, I answer your fourth question in the negative.

I think that it is important to note, in addition, that, apart from the question of duty, it is not clear that the Executive Committee retains the authority to enter into such agreements.¹⁰ As I indicated above, there may be questions concerning the precise status of the Executive Committee of the Organization and the extent of its authority to act to wind up the affairs of the Organization. It does, however, appear that, since the bodies participating in the Organization have agreed to terminate the Organization, the Executive Committee may not continue to commit the Organization to future obligations. See, e.g., City of Elyria v. Vandemark, 100 Ohio St. 365, 126 N.E. 314 (1919) (when a public office is abolished, the incumbent thereof ceases to be an officer). I do not purport to consider what acts the members of the Executive Committee might take in capacities other than as members of the Committee—e.g., as mayor of a participating municipality.

Let me add, moreover, that, to the extent that the Executive Committee has authority to wind up the affairs of the Organization, it may have obligations under the loan agreements which were previously executed. If those agreements were, in fact, entered into on behalf of the Organization, the Organization may be

¹⁰ There may, in fact, be some question as to whether the Organization ever had such authority. A county-wide civil defense organization is not expressly included as a political subdivision under R.C. 5915.01(F) and 5915.12. R.C. 5915.07 does not set forth specific powers and duties of such a body. The rules promulgated under R.C. Chapter 5715 in 1966, see note 3, *supra*, authorized county-wide civil defense organizations to acquire and hold property, Sections 3.e., 9.a., 10., but provided, with respect to federal surplus property, that "[a]ll property will be acquired through the county directors of Civil Defense. Such directors will coordinate the acquisition and distribution of property within their respective jurisdictions. . . ." Section 10.g at 11. Whether these rules were in effect at the time of the contracts in question requires a determination of the effective date of each contract.

obligated—if no loan extension agreements are executed—to see that the property is returned as provided by the agreements.¹¹ See, e.g., State ex rel. Village of Mayfield Heights v. Higham, 35 Ohio App. 243, 172 N.E. 159 (Cuyahoga County 1929) (a public official whose position is abolished retains the duty of transferring and delivering all property connected with that position to the proper authorities).

In response to your questions, it is, therefore, my opinion, and you are hereby advised, that:

1. A county-wide organization for civil defense created pursuant to R.C. 5915.07 constitutes an entity separate from the several political subdivisions which join in its creation, and any such political subdivision may be charged with the obligations created by the organization only to the extent that such subdivision has committed itself by entering into the organization.
2. A county civil defense organization created under R.C. 5915.06 does not automatically succeed to obligations of a county-wide civil defense organization created under R.C. 5915.07.
3. Participation by a civil defense organization or political subdivision in a program for the loan of federal vehicles for civil defense purposes is strictly voluntary, and there is no requirement that such loans be extended.
4. Any county, township, city, or village may, under R.C. 5915.12, accept a loan of equipment for civil defense purposes.

¹¹ But see note 9, supra.