

**OPINION NO. 78-030****Syllabus:**

The Director of Transportation may establish rules, pursuant to R.C. 5501.02, which require that counties apply for a permit, similar to that required of an "individual, firm or corporation" under R.C. 5515.01, before occupying a state highway.

**To: Anthony L. Gretick, Williams County Pros. Atty., Bryan, Ohio**  
**By: William J. Brown, Attorney General, May 8, 1978**

I have before me your request for an opinion on the following question:

Is a county contained in the definition of "any individual, firm, or corporation" as such terms are used in Section 5515.01 of the Ohio Revised Code?

R.C. 5515.01 provides, in pertinent part, as follows:

The director of transportation may upon formal application being made to him, grant a permit to any individual, firm, or corporation to use or occupy such portion of a road or highway on the state highway system as will not incommode the traveling public.

According to information which you have supplied, it is my understanding that until very recently when counties needed to occupy a state highway the engineer simply notified the Department of Transportation, and then proceeded with the project. Currently, the Department of Transportation requires that counties apply for a permit prior to commencement of any project requiring occupation of a state highway. By way of explanation, you indicate that in Williams County, as in most of northwest Ohio, the vast majority of these projects involve the construction or repair of drainage ditches, culverts, and other watercourses.

Addressing your specific question, courts in Ohio have consistently found that a county is neither a "legal person," Summers v. Hamilton County, 7 Ohio N.P. 542 (1900), nor a "corporation," Portage County v. Gates, 83 Ohio St. 19 (1910). Rather, a county is considered a subdivision of the state, with only such powers and privileges as are directly conferred by statute. Hunter v. Mercer County, 10 Ohio St. 515 (1860). The single exception to this extremely narrow view of the status of a county is found in Carder v. Fayette County, 16 Ohio St. 353 (1865), which held that a county was a "person" for purposes of a statute which permitted devise of realty to "any person." However, the proper resolution of your problem does not depend upon the legal status of a county, but rather upon the relation of counties and the Department of Transportation as set forth in R.C. Title 55.

R.C. 5501.11 (D) and R.C. 5501.31 appear to be most relevant. R.C. 5501.11 (D) provides, in pertinent part, that:

The functions of the department of transportation with respect to highways shall be:

. . .

(D) To cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.

R.C. 5501.31 provides:

The director of transportation shall have general supervision of all roads comprising the state highway system. He may alter, widen, straighten, realign, relocate, establish, construct, reconstruct, improve, maintain, repair, and preserve any road or highway on the state highway system, and, in connection therewith, relocate, alter, widen, deepen, clean out, or straighten the channel of any watercourse as he deems necessary, and purchase or appropriate property for the disposal of surplus materials or borrow pits, and, where an established road has been relocated, establish, construct, and maintain such connecting roads between the old and new location as will provide reasonable access thereto.

The director, in the maintenance or repair of state highway, shall not be limited to the use of the materials with which such highways, including the bridges and culverts thereon, were originally constructed, but may use any material which is proper or suitable. The director may aid the board of county commissioners in establishing, creating, and repairing suitable systems of drainage for all highways within its jurisdiction or control and advise with it as to the establishment, construction, improvement, maintenance and repair of such highways. (Emphasis added.)

It is clear from these sections that the Director of Transportation has broad supervisory authority over all roads comprising the state highway system. Any work involving the system must necessarily be approved by the director, including work undertaken by the counties. Under R.C. 5501.02, the Director of Transportation may prescribe rules for the exercise of his lawful authority over the system. If the Director chooses to require that counties file an application for a permit to occupy a state highway, it appears that he is within his statutory powers. In fact, his duty to supervise all roads in the state highway system would seem to require that he establish a system which would keep him apprised of all occupation of such system.

In conclusion, the Director of Transportation has broad supervisory duties with respect to the state highway system, and he may, in the exercise of that responsibility, establish rules for the use of the system which are not in conflict with statute. As there is no general and unrestricted grant to occupy state highway given to counties, the Director may require counties to apply for a permit prior to such occupation. Therefore, it is irrelevant whether a county is an "individual, firm, or corporation" under R.C. 5515.01.

Accordingly, it is my opinion that:

The Director of Transportation may establish rules, pursuant to R.C. 5501.02, which require that counties apply for a permit, similar to that required of an "individual, firm or corporation" under R.C. 5515.01, before occupying a state highway.