

OPINION NO. 82-024**Syllabus:**

A board of county commissioners may not purchase firefighting equipment for the use of other political subdivisions, except as authorized under R.C. 505.37.

To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney, Upper Sandusky, Ohio

By: William J. Brown, Attorney General, April 26, 1982

I have before me your request for an opinion which asks "whether or not the Board of County Commissioners is authorized to expend County funds for the purchase of equipment to be used by the various village, city and township fire departments."

Initially, it should be noted that a board of county commissioners, as a creature of statute, may act only when statutorily authorized to do so. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1, 2). Additionally, it has been held that "[t]he authority [of a board of county commissioners] to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county." State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916). See also State ex rel. Smith v. Maharry, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) ("[a]ll public property and public moneys. . . constitute a public trust fund. . . [which] can be disbursed only by clear authority of law").

Your letter indicates that the board of county commissioners proposes to purchase an air compressor, a piece of firefighting equipment. Based upon your letter and a conversation between your office and a member of my staff, it is my understanding that the board of county commissioners proposes to be the sole purchaser of this equipment, and to list it on inventories as county property and bear all the expenses of its maintenance. You have further indicated that the board of county commissioners has no need for such a piece of equipment. Instead, the equipment would be for the use of the fire departments of other political subdivisions.

R.C. 505.37(B) authorizes political subdivisions to cooperate in the acquisition and use of firefighting equipment by providing as follows:

The boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.42 of the Revised Code, and may prorate the expense of the joint action on any terms that are mutually agreed upon. (Emphasis added.)

As a county is clearly a political subdivision, it falls within the scope of this statute. Moreover, a board of county commissioners has been considered a legislative authority for some purposes, including the expenditure of county funds. See 1982 Op. Att'y Gen. No. 82-006. Thus, R.C. 505.37 authorizes a board of county commissioners to join with the legislative authorities of other political subdivisions in the purchase and use of firefighting equipment.

As noted above, however, it is my understanding that, in this instance, no "joint purchase" is contemplated. No other political subdivision proposes to expend funds for the purchase of the air compressor. I understand further, based upon conversations between your office and a member of my staff, that the board of county commissioners does not contemplate an agreement with the other political subdivisions for the proration of the expenses of maintenance, use, and operation of the equipment. The county alone would expend funds for such purposes if the equipment is acquired. Thus, the action which the board proposes to undertake would be unilateral, not "joint action" as provided for under R.C. 505.37. That provision sets forth the circumstances under which political subdivisions may cooperate in the purchase of firefighting equipment. The clear terms require "joint action" and "joint purchase." Action which does not meet such requirements falls outside the scope of the authority granted by the statute. As stated above, absent clear statutory authority, a board of county commissioners may not properly expend public funds.

Based upon the foregoing, it is my opinion, and you are advised, that a board of county commissioners may not purchase firefighting equipment for the use of other political subdivisions, except as authorized under R.C. 505.37.