

OPINION NO. 84-054**Syllabus:**

When a county board of mental retardation and developmental disabilities has personal property, acquired other than by gift, grant, devise, or bequest, and such property is no longer needed for public use, or is obsolete or unfit for the use for which it was acquired, the disposition of such property is governed by the procedures set forth in R.C. 307.12.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 18, 1984

I have before me your opinion request in which you ask: "What law and procedure are applicable to the disposition of property not acquired by gift, grant or bequest by a county board of mental retardation and developmental disabilities?" Discussion with your office has indicated that your concern is directed toward personal property which was purchased by the board of mental retardation and developmental disabilities and which is no longer needed for public use or is obsolete or unfit for the use for which it was acquired.

R.C. 5126.02 establishes in each county of Ohio, a county board of mental retardation and developmental disabilities. A board of mental retardation and

¹ In all counties, except Summit County, the structure and operation of county government is prescribed by the General Assembly. Various county bodies, like the county board of mental retardation and developmental disabilities, have been created to carry out certain functions prescribed by statute. Within the statutory framework of county government, legislative and certain administrative functions are vested in the board of county commissioners. Summit County is, however, a charter county. See Ohio Const. art. X, §3; R.C. 301.22. Such charter does not provide for a board of

developmental disabilities, as a creature of statute, has only those powers expressly granted or necessarily incident to the performance of its powers and duties. See State ex rel. Bentley & Sons Co. v. Pierce, 96 Ohio St. 44, 117 N.E. 6 (1917). See also Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980).

The powers and duties of a county board of mental retardation and developmental disabilities are set forth in R.C. 5126.05. The sole reference to the disposition of property within R.C. Chapter 5126 concerns property acquired by gift, grant, devise or bequest. R.C. 5126.05. As your request for my opinion is specifically limited to property not acquired by gift, grant, devise, or bequest, this section is not applicable.

R.C. Chapter 5126 contains no other grant of authority enabling boards of mental retardation and developmental disabilities to dispose of personal property, and I have found no other statutory provision which expressly confers upon a board of mental retardation and developmental disabilities the authority to dispose of personal property. It must next be determined whether such authority may be implied as necessarily incident to some express power of the board.

It is well settled that a creature of statute possesses those implied powers which are necessary to perform the powers and duties imposed upon it by statute. See State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four). Thus, the power to dispose of personal property may be implied if it is integrally related to an express duty of the board.² See 1978 Op. Att'y Gen. No. 78-027 (concluding that a county board of mental retardation has the implied authority to acquire personal property where the purchase of such property is integrally related to the board's express duties. The opinion reasoned that in order for the board to perform its duties, the authority to provide the means for performing such duties must be implied.)

Although a board of mental retardation and developmental disabilities may have the implied power to dispose of personal property, it is not unrestricted in the exercise of that power. The exercise of such power is subject to any statutory provision which may constrict or circumscribe the implied power. See Ebert v. Stark County Board of Mental Retardation; 1981 Op. Att'y Gen. No. 81-052.

R.C. 307.12 sets forth the procedure for disposition of personal property of the county and provides in pertinent part as follows:

(A) When the board of county commissioners finds, by resolution,

county commissioners. Instead, those powers generally exercised by a board of county commissioners are exercised by the county executive, as provided in article II of the charter, and the county council, as provided in article III of the charter.

In order for this opinion to have general applicability throughout the state, I have elected to address your question in terms of the statutory provisions governing county operations. Thus, any discussion of the statutory powers and duties of boards of county commissioners should be read in Summit County with reference to the appropriate local official who is responsible under the Summit County charter for performing the particular function being considered.

² It has long been accepted that the power to acquire and own real property carries with it the implied power of alienation and the discretion to use any reasonable method in disposing of such property. See, e.g., 1981 Op. Att'y Gen. No. 81-106; 1980 Op. Att'y Gen. No. 80-028; 1974 Op. Att'y Gen. No. 74-020; 1972 Op. Att'y Gen. No. 72-051. One opinion of which I am aware, 1947 Op. Att'y Gen. No. 1659, p. 107 concluded that the authority to alienate personal property is not necessarily implied from the express power to acquire such property. There appears to be no reason, however, to so limit the power of a public body to alienate personal property.

that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, the board may sell such property at public auction, for cash, to the highest bidder, after giving at least ten days' notice of the time and place of sale by posting a typewritten or printed notice in the offices of the county auditor and board. In case the fair market value of the property to be sold pursuant to this division is, in the opinion of the board, in excess of two hundred dollars, notice of the time and place of the sale shall also be published in a newspaper of general circulation in the county at least ten days prior to such sale. The board of county commissioners may authorize the sale of such personal property without advertisement or public notification and competitive bidding to the federal government, state, or any political subdivision of the state.

(B) When a county officer or department head determines that county-owned personal property under his jurisdiction, including motor vehicles, road machinery, equipment, tools, or supplies, is not of immediate need, the county officer or department head may lease such personal property to any municipal corporation, township, or other political subdivision of the state. Such lease shall require the county to be reimbursed under terms, conditions, and fees established by the board of county commissioners, or under contracts approved by the board.

In order to determine whether a county board of mental retardation and developmental disabilities is subject to the provisions of R.C. 307.12, it is necessary to examine the statutes governing the formation and operation of such board, and ascertain whether property under the jurisdiction of the board of mental retardation is in fact county property. R.C. 5126.02 creates the county board of mental retardation and developmental disabilities. It also provides that five members of the seven member board shall be appointed by the board of county commissioners. R.C. 5126.05 imposes upon the county commissioners the duty to levy taxes and make appropriations for the functioning of the county board of mental retardation and developmental disabilities. See R.C. 5705.19(L); 1969 Op. Att'y Gen. No. 69-045; 1969 Op. Att'y Gen. No. 69-015. Although the commissioners have no direct operational control or supervisory power over the county board of mental retardation, see 1981 Op. Att'y Gen. No. 81-050, Op. No. 78-027, the commissioners do control the composition of the county mental retardation board and have responsibility for fiscal appropriations. Boards of mental retardation and developmental disabilities have been treated as county boards for a variety of purposes. See State ex rel. Corrigan v. Seminatore, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (the county prosecuting attorney has the duty to represent county boards of mental retardation pursuant to R.C. 309.09, which provides that the prosecutor shall be the legal adviser of all county officers and boards); Ebert v. Stark County Board of Mental Retardation (the provisions of R.C. 124.38 entitling county employees to sick leave benefits applies to employees of boards of mental retardation); 1982 Op. Att'y Gen. No. 82-055 (employees of county boards of mental retardation are entitled to vacation benefits under R.C. 325.19 which provides for vacation leave for employees in the county service); Op. No. 81-050 (a county board of mental retardation is a "contracting authority" as defined in R.C. 307.92 for purposes of the county competitive bidding requirements); 1981 Op. Att'y Gen. No. 81-036 (employees of a county board of mental retardation are county employees and are thus included in the civil service); 1976 Op. Att'y Gen. No. 76-004 (R.C. 325.30, which requires the approval of the board of county commissioners in order for county employees to attend meetings and conventions applies to employees of county boards of mental retardation); Op. No. 69-045 (employees of county boards of mental retardation are county employees for purposes of R.C. 305.171, empowering a board of county commissioners to purchase health insurance for county employees). From the foregoing, I conclude that it is appropriate to treat personal property of the board of mental retardation and developmental disabilities as county property.

I turn now to an analysis of the provisions of R.C. 307.12. It is a fundamental rule of statutory construction that parts of a statute as well as different statutes that are part of the same scheme should be construed so as to render the statutes a consistent and harmonious whole, and a construction which destroys this harmony should be avoided. See Humphrys v. Winous Co., 165 Ohio St. 45, 133 N.E.2d 780 (1956); Gough Lumber Co. v. Crawford, 124 Ohio St. 46, 176 N.E. 677 (1931). Examination of R.C. 307.12 in its entirety reveals a legislative scheme for the disposition of county property. R.C. 307.12 separately addresses the scope of authority of the board of county commissioners and of the various county officers and department heads with respect to the disposition of county property. Because the legislature granted county officers and department heads the authority only to lease unneeded property under their respective jurisdictions, R.C. 307.12(B), and has otherwise provided for the disposition of county property by the board of county commissioners, the legislature appears to have intended that county officers and department heads, other than county commissioners, may dispose of county property only by leasing such property. Cf. 1981 Op. Att'y Gen. No. 81-082 (concluding that R.C. 305.171, which authorizes a board of county commissioners to purchase health insurance for county employees, does not restrict the power of each appointing authority to purchase health insurance for its employees; there is, however, no express statutory provision addressing the power of an appointing authority to purchase such insurance). Furthermore, even when a county officer or department head leases personal property, the statute provides that the lease must be subject to the terms of the board of county commissioners or approved by the board. To require that all county personal property be disposed of pursuant to R.C. 307.12 seems to be the interpretation most consistent with construing R.C. 307.12 as an entire, harmonious scheme for the disposition of county personal property.

In summary, it is my conclusion that personal property under the jurisdiction of a county board of mental retardation and developmental disabilities is county property and the provisions of R.C. 307.12 govern its disposition. Although a board of mental retardation and developmental disabilities may have an implied power to dispose of this property, R.C. 307.12 operates as a limitation upon such implied power and determines the applicable law and procedure for the disposition of personal property.³ Accordingly, a county board of mental retardation has no authority to sell its personal property and may only lease such property in accordance with R.C. 305.12(B).

Therefore, it is my opinion, and you are advised, that when a county board of mental retardation and developmental disabilities finds that it has personal property, acquired other than by gift, grant, devise, or bequest, and such property is no longer needed for public use, or is obsolete or unfit for the use for which it was acquired, the disposition of such property is governed by the procedures set forth in R.C. 307.12.

³ Because Summit County is a charter county, it may, through a charter amendment or the enactment of an ordinance, set forth a method for the disposition of the property of the various county officers and boards which is at variance with the method mandated by R.C. 307.12.