

OPINION NO. 86-104**Syllabus:**

1. Pursuant to R.C. 307.01, the board of county commissioners is required to provide offices for the county children services board.
2. The board of county commissioners may not charge rent for office space it provides to the county children services board.

To: C. Keith Plummer, Guernsey County Prosecuting Attorney, Cambridge, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your request for my opinion concerning the provision of office space for the county children services board. I have restated your questions as follows:

1. Does the board of county commissioners have the duty to provide office space for the county children services board?
2. Does the board of county commissioners have the authority to charge rent to the county children services board for the use of office space?

R.C. 307.01 states, in part, that:

(A) A courthouse, jail, public comfort station, offices for county officers, and a county home shall

be provided by the board of county commissioners when, in its judgment, any of them are needed. The buildings and offices shall be of such style, dimensions, and expense as the board determines.... The board shall also provide equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices. (Emphasis added.)

See also R.C. 307.02 (methods by which board of county commissioners may acquire county offices).

Although R.C. 307.01 states that a board of county commissioners shall provide offices for county officers "when, in its judgment, [the offices] are needed," R.C. 307.01 has been interpreted as requiring the board of county commissioners to provide office space for county officers. See 1983 Op. Att'y Gen. No. 83-053 at 2-212 (the clerk of a court of common pleas is "a county officer for whom offices must be provided under R.C. 307.01"); 1974 Op. Att'y Gen. No. 74-032 at 2-145 to 2-146 (under R.C. 307.01, "the board of county commissioners [is] required to provide such facilities as will be conducive to the expeditious and economical administration of all county offices.... Since the tuberculosis clinic is a duly established county agency, it follows... that the board of county commissioners is required by R.C. 307.01 and 307.02 to provide it with proper office space"). Cf. 1985 Op. Att'y Gen. No. 85-003 (concluding that R.C. 3709.34, which provides that the board of county commissioners or the legislative authority of a city "may" furnish suitable quarters to a board of health, is mandatory). See generally Stanton v. Frankel Brothers Realty Co., 117 Ohio St. 345, 355, 158 N.E. 868, 871 (1927) (the statutory use of the word "may" is read as "must" where the public is interested or where a matter of public policy is involved). The board of county commissioners does have discretion, however, as to whether a county office (other than the county courts) will be situated in the county courthouse or in other quarters. See State ex rel. Bittikofer v. Babst, 47 Ohio St. 64, 119 N.E. 136 (1917); Op. No. 74-032. See also State ex rel. Hottle v. Board of County Commissioners, 52 Ohio St. 2d 117, 370 N.E.2d 462 (1977) (the various branches of county government may be situated in the county courthouse only if the needs of the courts so permit).

It is clear that a county children services board is a county agency, composed of county officers. See R.C. Chapter 5153; 1986 Op. Att'y Gen. No. 86-036; 1968 Op. Att'y Gen. No. 68-036. Thus, the board of county commissioners is required by R.C. 307.01 to provide office space for the children services board.

I turn now to your second question, which asks whether the board of county commissioners has the authority to charge rent to the children services board for the use of office space. The underlying principle to be applied to this issue was clearly established in 1982 Op. Att'y Gen. No. 82-011, wherein my predecessor considered the question whether an office of county government which possesses the mandatory duty or discretionary authority to provide services to other public offices may, in the absence of specific statutory authorization therefor, charge to the office receiving such services the cost of providing the services. Those items mentioned in Op. No.

82-011 include charges against each county office by the board of county commissioners for building use and maintenance.

Op. No. 82-011 concludes that a board of county commissioners may not charge for services rendered to a public office, regardless of whether those services are mandatory or discretionary in nature, unless there is express statutory authorization for such a charge or unless such authority may be necessarily implied from an express power. The basis for this conclusion is that boards of county commissioners are creatures of statute which may exercise only those powers expressly granted by statute and those necessarily implied therefrom. See, e.g., State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921); 1979 Op. Att'y Gen. No. 79-026; 1975 Op. Att'y Gen. No. 75-070.

No statutory provision of which I am aware expressly grants the board of county commissioners the power to charge rent to the children services board. Nor can it be said that the authority is necessarily implied from any express power granted to the board of county commissioners. Therefore, the board of county commissioners may not charge rent to the county children services board for office space provided.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 307.01, the board of county commissioners is required to provide offices for the county children services board.
2. The board of county commissioners may not charge rent for office space it provides to the county children services board.