

**OPINION NO. 70-091****Syllabus:**

1. The county auditor, pursuant to Section 9.35, Revised Code, but subject to the provisions of Section 307.84, Revised Code, is the public official authorized to contract for and engage the services of a financial institution, or other person, firm or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform any or all of the ministerial functions considered necessary by such public official for the preparation of the county tax lists and duplicates required by Sections 319.28, 319.29 and 319.34, Revised Code.

2. The county treasurer, or the county auditor if authorized to prepare the tax bills, pursuant to Section 323.11, Revised Code, is the public official authorized pursuant to Section 9.35, Revised Code, to contract for and engage the services of a financial institution, or other person, firm or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform any or all of the ministerial functions considered necessary by such public official for the preparation of the county treasurer's tax bills and tax bills required by Section 323.11, Revised Code.

3. A contract authorized pursuant to Section 9.35, Revised Code, cannot extend beyond the contracting public official's term of office.

4. Moneys to the credit of the real estate assessment fund created by Section 325.31, Revised Code, may be expended, upon appropriation by the board of county commissioners, only for the purpose of defraying the cost incurred by the county auditor in assessing real estate pursuant to the provisions of Chapter 5713, Revised Code, which does not authorize or include the payment therefrom of all or any part of the cost of preparing the county auditor's tax lists and duplicates or the county tax bills required by Sections 319.28, 319.29, 319.34 and 323.11, Revised Code.

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To: Francis B. Douglass, Chairman, Board of Tax Appeals, Columbus, Ohio  
By: Paul W. Brown, Attorney General, July 24, 1970

Your letter requesting my opinion reads:

"The Board of Tax Appeals has recently been asked to approve forms of County Auditors Tax Lists and County Treasurers Duplicates of Real and Public Utility property under the authority vested in the Board by Sec. 319.28 R. C. and Sec. 5715.30 R. C. These requests included forms of County Treasurers tax bills and tax receipts which the Board of Tax Appeals must approve under Sec. 323.11 R. C.

"No particular problem would arise except that these counties have submitted the above mentioned requests in connection with contracts purporting to be made by and between Boards of County Commissioners and various private organizations offering Automatic Data Processing services proposing to prepare the above mentioned tax lists and duplicates and tax bills. Most of these contracts are for periods of four years.

"In view of the fact that Sec. 319.28 R. C. requires the County Auditor to prepare the tax duplicate and Sec. 323.11 R. C. requires the County Treasurer to prepare tax bills -

1. Who are the proper parties for making contracts for automatic data processing of county auditors tax lists and county treasurers tax duplicates and for the preparation of tax bills?
2. For what period of time may such contracts be made?
3. May payment be made to pri-

vate organizations offering automatic data processing services involving the preparation of tax lists and duplicates from the Real Estate Assessment Fund created by Sec. 325.31 R. C.?

- 4. In the light of Question 3, may the proper party enter into such a contract without competitive bidding?"

The county auditor has the duty and is responsible for the preparation of the county tax lists and duplicates. Sections 319.28, 319.29 and 319.34, Revised Code.

The county treasurer has the duty and is responsible for the preparation of the tax bills unless the department of taxation expressly authorizes the county auditor to make up the tax bills and tax receipts to be used by the county treasurer. Section 323.11, Revised Code.

No other official or governmental unit has been authorized to appropriate the responsibilities and duties imposed upon the county auditor or county treasurer. Elected or appointed officials cannot, by contract or otherwise, divest themselves of the responsibilities and duties of their respective offices, although, where authorized, such officials may delegate to others the performance of various ministerial duties and responsibilities.

Electronic or automatic data processing equipment and computer equipment, and services relating thereto, fulfill ministerial functions even though such equipment may be complex in nature and require specialized personnel for their operation.

The county auditor and county treasurer are each a "public official" as that term is used in Section 9.35, Revised Code.

Section 9.35, Revised Code, reads in part:

"(A) \* \* \* \* \*"

"(B) Any public official may contract for and engage the services of a financial institution, or other person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform mechanical, clerical, or record-keeping services necessary in the performance of his duties. \* \* \*

"(C) A contract authorized by division (B) of this section may be entered into only:

"(1) If the surety bond required of such public official includes within its coverage any loss which might occur as the result of such contract:

"(2) Pursuant to a resolution duly adopted

by the governing board, commission, bureau, or other public body having jurisdiction over such public official authorizing a contract for the performance of such services;

"(3) If the provisions of such contract do not conflict with the uniform system of accounting and reporting prescribed by the bureau of inspection and supervision of public offices;

"(4) If assurances satisfactory to the bureau of inspection and supervision of public offices are furnished by both the financial institution, or other person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services, and the public official that the books and records of the public official in the possession of the person performing such services shall be subject to examination by the bureau of inspection and supervision of public offices to the same extent as if such services were being performed by the public official himself.

"(D) \* \* \* \* \*

"(E) Nothing contained in this section relieves such public official from the primary responsibility for the maintenance of the records and performance of the duties of his office."

Section 307.84, Revised Code, reads:

"The board of county commissioners of any county may, by resolution, establish a county automatic data processing board. The board shall consist of the county treasurer or his representative, a member or representative of the board of county commissioners chosen by the board, and the county auditor or his representative who shall serve as secretary.

"After the initial meeting of the county automatic data processing board, no county office shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board.

"As used in sections 307.84 to 307.846 307.84.67, inclusive, of the Revised Code, 'county office' means any officer, department, board, commission, agency, court, or other office of the county."

Under and subject to the provisions of Section 9.35, *supra*, and subject to the limitations imposed by Section 307.84, *supra*, and related sections, the county auditor and county treasurer may contract for the use of electronic or automatic data processing or computer equipment and services to perform any or all mechanical, clerical, record-keeping or related ministerial services or functions con-

sidered necessary for the preparation of the required county tax lists and duplicates, tax bills, and tax receipts.

The use of such equipment or services does not relieve a public official from the primary responsibility for the maintenance of the records and performance of the duties of his office. While the county auditor and county treasurer may contract for data processing or computer services, such officials are not expressly authorized to contract for ministerial services extending beyond the period of time of such officials' term of office and there is no necessity for authorizing a public official to contract for ministerial services which would bind the successor to his office. I therefore conclude that a public official may contract for a period not to exceed the term of his office. Subject to such time limitation, the contract period, and the nature and extent of such services to be performed pursuant to contract, being for and on behalf of such county official, shall be determined by such county official, subject to the powers and duties of such official's office, and the authority, conditions and limitations imposed by law with reference to the making of such contracts.

Section 9.35, Revised Code, reads in pertinent part:

"(C) A contract authorized by division  
(B) of this section may be entered into only:

"(1) \* \* \* \* \*

"(2) Pursuant to a resolution duly adopted by the governing board, commission, bureau, or other public body having jurisdiction over such public official authorizing a contract for the performance of such services;

\* \* \* \* \*

With reference to contracts of the county auditor and county treasurer, the governing board is the board of county commissioners which is responsible for the appropriation, by resolution, of the funds necessary to pay for any contractual services authorized by Section 9.35, supra.

You have inquired whether the cost of automatic data processing services involving the preparation of tax lists and duplicates may be paid from the real estate assessment fund created by Section 325.31, Revised Code. Being a special purpose fund, such determination must be made by consideration of the statutory provisions relating to such fund.

Section 325.31, Revised Code, reads in pertinent part:

\* \* \* Moneys to the credit of the 'real estate assessment fund' may be expended, upon appropriation by the board of county commissioners, only for the purpose of defraying the cost incurred by the county auditor in assessing real estate pursuant to the provisions of Chapter 5713. of the Revised Code. The board shall not transfer moneys required to be de-

posited in the 'real estate assessment fund' to any other fund. Following an assessment of real property, pursuant to Chapter 5713. of the Revised Code, any moneys not expended for the purpose of defraying the cost incurred in assessing real estate and thereby remaining to the credit of the 'real estate assessment fund' shall be apportioned ratably and distributed to those taxing authorities which contributed to such fund. Provided, no such distribution shall be made if the amount of such unexpended moneys remaining to the credit of the 'real estate assessment fund' does not exceed five thousand dollars. \* \* \*"

I conclude, from a careful reading of Chapters 5713 and 5715, Revised Code, that the real estate assessing process is completed before the auditor makes up his tax list and duplicate, and the tax bills are prepared. The preparation of the various tax lists and duplicates and the tax bills, while an integral part of the taxation process, are not part of the assessing function, and therefore such funds, under the provisions of Section 325.31, supra, may not be used or expended for such purposes.

Inasmuch as your fourth question was asked in terms of question three relating to payment of such contractual obligation from the real estate assessment fund, which I have concluded is not authorized, there is no basis in terms of question three that such question can be answered.

I am of the opinion and you are advised that:

1. The county auditor, pursuant to Section 9.35, Revised Code, but subject to the provisions of Section 307.84, Revised Code, is the public official authorized to contract for and engage the services of a financial institution, or other person, firm or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform any or all of the ministerial functions considered necessary by such public official for the preparation of the county tax lists and duplicates required by Sections 319.28, 319.29 and 319.34, Revised Code.

2. The county treasurer, or the county auditor if authorized to prepare the tax bills, pursuant to Section 323.11, Revised Code, is the public official authorized pursuant to Section 9.35, Revised Code, to contract for and engage the services of a financial institution, or other person, firm or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform any or all of the ministerial functions considered necessary by such public official for the preparation of the county treasurer's tax bills and tax bills required by Section 323.11, Revised Code.

3. A contract authorized pursuant to Section 9.35, Revised Code, cannot extend beyond the contracting public official's term of office.

4. Moneys to the credit of the real estate assessment fund created by Section 325.31, Revised Code, may be expended, upon appropriation by the board of county commis-

sioners, only for the purpose of defraying the cost incurred by the county auditor in assessing real estate pursuant to the provisions of Chapter 5713, Revised Code, which does not authorize or include the payment therefrom of all or any part of the cost of preparing the county auditor's tax lists and duplicates or the county tax bills required by Sections 319.28, 319.29, 319.34 and 323.11, Revised Code.