

OPINION NO. 91-044**Syllabus:**

The board of county commissioners may contract with an entity other than those enumerated in R.C. 9.833(C)(3) for the administration of a self-insured health care benefit plan for county personnel, so long as it complies with the competitive bidding requirements of R.C. 307.86.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Lee Fisher, Attorney General, September 30, 1991

I have before me your opinion request concerning the authority of the board of county commissioners to contract for the administration of a self-insured health care plan provided by the county for county personnel. Based upon conversations between members of our staffs, you have reworded your opinion request to ask the following: May the board of county commissioners contract with an entity to

administer the county's self-funded health care insurance plan without competitive bidding, where the administrator is not one of the entities named in R.C. 9.833(C)(3)?

I begin by noting that, effective April 11, 1991, the provision of self-funded health care benefit programs for, among others, county personnel became subject to R.C. 9.833 which allows political subdivisions to establish individual or joint self-funded health care benefit programs. Am. Sub. H.B. 737, 118th Gen. A. (1990). Pursuant to R.C. 9.833(C)(3), where a county establishes a self-funded health care plan:

A contract may be awarded, without the necessity of competitive bidding, to any person, political subdivision, nonprofit corporation organized under [R.C. Chapter 1702], or regional council of governments created under [R.C. Chapter 167] for purposes of administration of an individual or joint self-insurance program. No such contract shall be entered into without full, prior, public disclosure of all terms and conditions. Such disclosure shall include, at a minimum, a statement listing all representations made in connection with any possible savings and losses resulting from such contract, and potential liability of any political subdivision or employee. The proposed contract and statement shall be disclosed and presented at a meeting of the political subdivision not less than one week prior to the meeting at which the political subdivision authorizes the contract. (Emphasis added.)

The first sentence of R.C. 9.833(C), therefore, raises the question as to whether a county may contract for the administration of a self-insurance plan with an entity other than one of those enumerated therein, and, if so, whether the competitive bidding requirements of R.C. 307.86 apply to such contract.

**Contracts for the Administration of Insurance Plans Under
R.C. 305.171 Must Comply With the Requirements of R.C. 307.86**

In order to answer these questions, it is first necessary to consider the provisions of R.C. 305.171, which authorizes the board of county commissioners to contract, purchase, or procure, among other things, various types of group health care benefits for county officers, employees, and their dependents, so long as the group insurance policies are "issued by an insurance company, a medical care corporation organized under [R.C. Chapter 1737], or a dental care corporation organized under [R.C. Chapter 1740]," R.C. 305.171(A). Prior to the enactment of R.C. 9.833, authorizing political subdivisions to establish self-funded health benefit plans, R.C. 305.171 was the sole authority for the county to provide health care benefits for its personnel. My predecessor concluded that, pursuant to a county's authority to provide health care benefits under R.C. 305.171, it has the implied authority to contract with an entity to administer the insurance plan. 1984 Op. Att'y Gen. No. 84-066 (syllabus, paragraph two). Op. No. 84-066 explains that since the administration of the plan is a necessary part of the provision of insurance, the county may contract with an entity to perform that task, even though R.C. 305.171 does not expressly empower the county to contract for administrative services.

Whenever a county contemplates entering into a contract, however, the provisions of R.C. 307.86 must also be considered. R.C. 307.86 requires that where the county makes a purchase of services, with certain exceptions, at a cost in excess of ten thousand dollars, it must use competitive bidding. *See generally Sentinel Security Systems v. Medkeff*, 36 Ohio App. 3d 86, 521 N.E.2d 7 (Summit County 1987). Specifically concerning purchases made under R.C. 305.171, I note that both R.C. 307.86(F) and R.C. 305.171(C) exempt from the competitive bidding requirements of R.C. 307.86 purchases of the benefits themselves, as specified in those statutes. As explained in Op. No. 84-066, however, the purchase of insurance benefits is different from the purchase of services to administer the insurance program. Thus, the exemptions prescribed by R.C. 307.86(F) and R.C. 305.171(C) have no application to a contract for the purchase of services to administer the kinds of health care insurance programs authorized by R.C. 305.171 for county personnel. Accordingly, the county's purchase of services to administer an insurance plan under R.C. 305.171, as opposed to the self-funded plans contemplated by R.C. 9.833, is subject to competitive bidding as required by R.C. 307.86 if the amount of the contract exceeds ten thousand dollars.

**A County May Authorize, Pursuant to R.C. 9.833(C)(3),
Non-Competitively Bid Contracts Only to Those
Entities Listed in R.C. 9.833(C)(3)**

It is to be presumed that when the legislature enacts a statute, it is aware of all prior sections of the Revised Code. *In re Estate of Tonsic*, 13 Ohio App. 2d 195, 235 N.E.2d 239 (Summit County 1968). Further, it is well settled that: "Statutes relating to the same subject matter should be construed *in pari materia*, although they were enacted at different sessions of the General Assembly." *Warner v. Ohio Edison Co.*, 152 Ohio St. 303, 89 N.E.2d 463 (1949) (syllabus, paragraph one). Thus, when the legislature enacted R.C. 9.833, it was aware of the already existing authority vested in counties by R.C. 305.171, and intended that the two statutes, at least to the extent they deal with the same subject matter, be read together.

Pursuant to R.C. 305.171, a county may procure health care benefits for county personnel only through group insurance policies issued by the types of entities therein enumerated. Through the enactment of R. C. 9.833, the legislature obviously intended to expand the county's authority in this regard by enabling the county to provide health care benefits to county personnel through individual or joint self-funded plans. It appears, therefore, that the legislature intended R.C. 9.833 to enhance a county's ability to provide health care benefits to its personnel.

A county is free to contract with any type of entity to administer its insurance plan under R.C. 305.171 as long as it complies with the competitive bidding procedures outlined in R.C. 307.86. In light of this broad grant of authority under R.C. 305.171, there appears to be no reason to conclude that the legislature intended that R.C. 9.833(C)(3) restrict the county's choice of administrators to only those listed therein where the county's health care benefits are provided under a self-funded plan. Rather, the provisions of R.C. 9.833(C)(3) appear to offer the county the convenience of contracting for the administration of its self-insurance program with specific entities without requiring competitive bidding, so long as the requisite disclosure of the contract provisions is made.

Based on the foregoing, it is my opinion, and you are hereby advised that, the board of county commissioners may contract with an entity other than those enumerated in R.C. 9.833(C)(3) for the administration of a self-insured health care benefit plan for county personnel, so long as it complies with the competitive bidding requirements of R.C. 307.86.