

OPINION NO. 2004-031**Syllabus:**

A board of county commissioners may, by resolution pursuant to R.C. 329.04(A)(7) and (B) or R.C. 329.05, assign to the county department of job and family services powers and duties relating to family services duties or workforce development activities, including the authority for the county director of job and family services to enter into contracts necessary to perform these powers and duties. Contracts made pursuant to this authority are entered into by the county director of job and family services, rather than by the board of county commissioners, and there is no need for compliance with R.C. 305.25. There must, however, be compliance in each instance with the statutory requirements that apply to a particular contract, such as the requirements of R.C. 5705.41 that govern the certification of available funds and the provisions of R.C. 307.55 and R.C. 319.16 that govern the issuance of warrants and allowance of claims against the county.

To: Amanda Spies Bornhorst, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio

By: Jim Petro, Attorney General, August 25, 2004

We have received your request for an opinion concerning the authority of the director of a county department of job and family services to enter into contracts. You asked initially whether a board of county commissioners may, by resolution, authorize the director of the county department of job and family services to enter into contracts on behalf of the board of county commissioners despite the language of R.C. 305.25, which states:

No contract entered into by the board of county commissioners, or order made by it, shall be valid unless it has been assented to at a regular or special session of the board, and entered in the minutes of its proceedings by the county auditor or the clerk of the board.

Following communications with your representative, we have rephrased your question to read as follows:

When a board of county commissioners, by resolution pursuant to R.C. 329.04(A)(7) and (B) or R.C. 329.05, assigns to the county director of job and family services powers and duties relating to family services duties or workforce development activities, does R.C. 305.25 apply to contracts made by the director to carry out those duties?

Your representative informed my staff that the director of the Tuscarawas County Department of Job and Family Services raised this issue after being informed that the provisions of R.C. 305.25 may prevent the county director of job and family services from entering into contracts without the participation of the county commissioners. Accordingly, you have requested clarification of this issue.

In answering your question, we discuss first the general process for entering into county contracts, then the powers and duties of the county director of job and family services, and finally the meaning and application of R.C. 305.25. For the reasons that follow, we conclude that a board of county commissioners may, by resolution pursuant to R.C. 329.04(A)(7) and (B) or R.C. 329.05, assign to the county department of job and family services powers and duties relating to family services duties or workforce development activities, including the authority for the county director of job and family services to enter into contracts necessary to perform these powers and duties. Contracts made pursuant to this authority are entered into by the county director of job and family services, rather than by the board of county commissioners, and there is no need for compliance with R.C. 305.25. There must, however, be compliance in each instance with the statutory requirements that apply to a particular contract, such as the requirements of R.C. 5705.41 that govern the certification of available funds and the provisions of R.C. 307.55 and R.C. 319.16 that govern the issuance of warrants and allowance of claims against the county.¹

¹This opinion does not consider the authority of a county that has acquired home rule powers pursuant to Ohio Const. art. X, § 1 or has adopted a charter pursuant to Ohio Const. art. X, §§ 3 and 4. See *Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 583 n.2, 621 N.E.2d 696 (1993); 2002 Op. Att'y Gen. No. 2002-031, at 2-206 n.1.

County contracts

It is firmly established that officials and entities of a county have only the powers and duties granted to each pursuant to statute, either expressly or by necessary implication. *See, e.g., Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 582-83, 621 N.E.2d 696 (1993); *State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917); 2002 Op. Att'y Gen. No. 2002-031, at 2-206. The board of county commissioners has been given statutory authority to act on behalf of the county and to enter into contracts dealing with a wide variety of matters. *See, e.g., Jones v. Comm'rs of Lucas County*, 57 Ohio St. 189, 212-16, 48 N.E. 882 (1897); *Burkholder v. Lauber*, 6 Ohio Misc. 152, 216 N.E.2d 909 (C.P. Fulton County 1965); R.C. 307.02 (providing county facilities); R.C. 307.04 (light, heat, and power contracts); R.C. 307.11 (leases of mineral lands); R.C. 307.15 (contracts with other units of government). R.C. 305.25, quoted above, provides that, for these contracts to be valid, they must be assented to at a regular or special meeting of the board of county commissioners and entered into the minutes of the board's proceedings.

Various other statutory requirements also apply to the execution of county contracts. *See, e.g.,* R.C. 5705.41; R.C. 307.55; R.C. 319.16. A contract that is entered into by the board of county commissioners in accordance with all applicable statutory requirements obligates the county to take action or make payments in accordance with the contract.

It has been established, however, that officials and entities other than the board of county commissioners may also be given authority to enter into contracts to benefit the county. As was stated in *Burkholder v. Lauber*: "[I]t is the province of the board of county commissioners to make contracts for the county, and *no other officer can bind the county by contract, unless by reason of some express provision of law.*" *Burkholder v. Lauber*, 6 Ohio Misc. at 154 (emphasis added). Thus, where the statutes so provide, a person or entity other than the board of county commissioners may be empowered to enter into contracts that bind the county.² This authority may be independent of the power of the board of county commissioners and may permit an official or entity other than the board of county commissioners to enter into contracts that the board of county commissioners is not empowered to make. *See, e.g., CB Transp., Inc. v. Butler County Bd. of Mental Retardation*, 60 Ohio Misc. 71, 397 N.E.2d 781 (C.P. Butler County 1979) (county board of mental retardation has exclusive authority to contract for the purpose of providing transportation for mentally retarded persons, and board of county commissioners does not have that authority). Like a contract entered into by the board of county commissioners, a contract that is entered into by an official or entity of the county in accordance with all applicable statutory requirements is a binding obligation.³

²The authority for entities other than the board of county commissioners to enter into contracts that bind the county is consistent with the principle that a claim against a department of the county, such as the department of job and family services, is in effect a claim against the county. *See Wilson v. Stark County Dep't of Human Servs.*, 70 Ohio St. 3d 450, 453, 639 N.E.2d 105 (1994) ("[a] claim against a county department of human services ... is in effect a claim against the county itself.... The burdens imposed by litigation and damage awards ultimately fall upon the same county resources regardless of whether the nominal defendant is the county board of commissioners or the county department of human services").

³There are many statutory provisions that authorize officials or entities of the county to enter into contracts. *See, e.g.,* R.C. 306.04(C)(4) (county transit board may enter into con-

In exercising its authority to enter into a contract, each public official or entity must comply with all applicable statutory provisions. A determination of which statutes apply to each contract must be made on a case-by-case basis. There are several statutes, however, that serve to protect public funds and are of general applicability to contracts entered into by county entities. *See, e.g.*, 1968 Op. Att’y Gen. No. 68-076 (syllabus) (“[a] county does not become obligated for the expenditure of county funds except as a result of a contract made in conformity with the statutory requirements of Chapters 305 and 307 of the Revised Code, together with the certificate of the county auditor required by Section 5705.41 of the Revised Code”).

R.C. 5705.41 restricts the appropriation and expenditure of money by all subdivisions and taxing units of the state, including counties. *See* R.C. 5705.01(A). R.C. 5705.41 contains detailed provisions establishing requirements for the execution of valid contracts. R.C. 5705.41(B) provides that money may not be expended unless it has been properly appropriated. With limited exceptions, R.C. 5705.41(D) requires that, for a contract to be valid, there must be a certificate of the fiscal officer stating that the amount required to meet the obligation has been lawfully appropriated for the purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. R.C. 5705.41(C) provides that money may be expended only by a proper warrant drawn against an appropriate fund. *See* 1985 Op. Att’y Gen. No. 85-043, at 2-152 (“[m]oneys of a county department of human services [now county department of job and family services] are held within the county treasury and paid out upon warrant of the county auditor. Pursuant to R.C. 5705.41, such moneys may not be expended unless the required certificate has been provided” (citations omitted)).

tracts in the exercise of its duties); R.C. 325.17 (certain county officers are authorized to contract for the services of fiscal and management consultants); R.C. 5153.16(C)(2) (contracting authority of public children services agency); *see also* R.C. 307.851 (authorizing board of county commissioners to enter into contract for the expenditure of certain tax moneys for health and human services or social services, but requiring prior notification to the county entity that is required to provide, oversee, or acquire related mandated or essential services, which entity must either commit to providing the services itself or authorize the board of county commissioners to proceed with the contract); R.C. 307.92 (for purposes of competitive bidding under R.C. 307.86, defining “contracting authority” to mean “any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof”); 1993 Op. Att’y Gen. No. 93-065, at 2-310 (“a veterans service commission is a county agency with the authority to enter into contracts on its own behalf” and is a contracting authority under R.C. 307.92); 1992 Op. Att’y Gen. No. 92-050, at 2-206 (a county children’s services board is a contracting authority under R.C. 307.92). As discussed more fully below, the county department of job and family services, through its director, is authorized to enter into various types of contracts. *See, e.g.*, R.C. 329.04. When the General Assembly has intended that the approval of a supervisory body is necessary to make a contract valid, it has expressly so stated. *See, e.g.*, R.C. 9.35 (authorizing a public official who is required to issue checks, keep books and records, and perform other clerical and financial duties to contract to purchase services necessary to perform the duties, but requiring, *inter alia*, that the governing board, commission, bureau, or other public body with jurisdiction over the official adopt a resolution authorizing the contract).

With respect to the expenditure of county funds, R.C. 307.55(B) states that public money shall be disbursed by the county treasurer, upon the warrant of the county auditor "specifying the name of the party entitled to such money, on what account, and upon whose allowance, if not fixed by law." See also R.C. 319.16 ("[t]he county auditor shall issue warrants ... for all moneys payable from the county treasury"); R.C. 321.15 ("[n]o money shall be paid from the county treasury, or transferred to any person for disbursement, except on the warrant of the county auditor").

With limited exceptions, money may not be paid from the county treasury without the allowance of the board of county commissioners. In this regard, R.C. 319.16 states, in part:

The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of mental retardation and developmental disabilities, so authorized by law.

See also R.C. 307.55(A) ("[n]o claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant ... of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certification of the person or tribunal allowing the claim"); *Jones v. Comm'rs of Lucas County*, 57 Ohio St. at 214 ("[t]he word 'claim,' as used in these statutes, we think naturally imports a matter of charge which is based upon some statute, or grows out of the performance of some authorized contract, wherein the inquiry of the commissioners as to the auditor, is confined to whether or not the service was rendered, and, as to other claims, to determine the amount due, as contrasted with a mere demand unsupported by law"); 2003 Op. Att'y Gen. No. 2003-029, at 2-243 n.4 (the power granted to a board of county commissioners is a very narrow one, "confined to a determination of whether the claim has a legal basis, and if so, whether in fact a service was rendered, and the amount to be paid upon an unliquidated claim"); 1986 Op. Att'y Gen. No. 86-105, at 2-576; 1986 Op. Att'y Gen. No. 86-024 (syllabus, paragraph 1) ("[w]hen a request for the expenditure of county moneys is properly submitted to the board of county commissioners for allowance under R.C. 307.55 and R. C. 319.16, the board may disallow the request if the board determines that the expenditure is not authorized by law; the board may allow a lesser amount than was requested if the board determines that the expenditure is authorized by law, but the amount which was requested is unreasonable"); 1985 Op. Att'y Gen. No. 85-066, at 2-252 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008) ("[t]he county commissioners may refuse to allow a claim for reimbursement of fees if the fees were not paid pursuant to statutory authority, and may allow no more than a reasonable amount for any claim"); 1985 Op. Att'y Gen. No. 85-043.

Thus, subject to statutory exceptions, no contract binds the county unless it complies with the requirements of R.C. 5705.41, including the provisions governing the certification of available funds. Further, the county may not expend money except by a proper warrant in an amount that, if not fixed by law, must be allowed by the board of county commissioners or another body given the power to allow such claims against the public treasury. See R.C. 307.55; R.C. 319.16. These provisions prevent the expenditure of county funds without the approval of an authorized official or entity, which frequently is the board of county commissioners. See, e.g., 1986 Op. Att'y Gen. No. 86-024 (syllabus, paragraph 2) ("[a] county officer, employee, agent, board, or commission may enter into a contract under which payments are

to be made from the county treasury without the allowance of the board of county commissioners under R.C. 307.55 and R.C. 319.16 only if such county officer, employee, agent, board, or commission has clear statutory authority to do so"); 1985 Op. Att'y Gen. No. 85-066, at 2-248 n.1 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008); *see also State ex rel. Giuliani v. Perk*, 14 Ohio St. 2d 235, 236, 237 N.E.2d 397 (1968) (where court is authorized to allow amount due, there is no need for allowance by the board of county commissioners); R.C. 5126.05(A)(5) and R.C. 5126.056(B) (county department of mental retardation and developmental disabilities may authorize expenditures and payments under R.C. Chapter 5126 and in accordance with R.C. 319.16); R.C. 5115.04 (disability financial assistant payments made by the county department of job and family services must be distributed in accordance with R.C. 319.16, as well as R.C. 117.45 and 329.03). Therefore, even apart from the provisions of R.C. 305.25, contracts for the payment of county funds are not valid unless they follow applicable procedures designed to provide for the availability of funds and authorization by a qualified person.⁴

Having reviewed general provisions governing the execution of county contracts and expenditure of county funds, we turn now to consideration of the statutes governing the county department of job and family services and its director.

Powers and duties of the county director of job and family services

The county department of job and family services is established pursuant to R.C. 329.01, which authorizes the board of county commissioners to appoint the county director of job and family services. R.C. 329.01. The county director is given "full charge" of the department, "[u]nder the control and direction of the board of county commissioners." R.C. 329.02. The county director is empowered, with the approval of the board of county commissioners, to appoint various assistants, superintendents, and employees and fix their compensation. *Id.*; *see, e.g.*, 1986 Op. Att'y Gen. No. 86-027, at 2-141 to 2-142; 1983 Op. Att'y Gen. No. 83-023; 1956 Op. Att'y Gen. No. 6316, p. 152.

⁴There are specific statutory provisions that exclude certain contracts from compliance with statutory restrictions that would otherwise apply. For example, R.C. 5104.32(A) provides that, subject to limited exceptions, all purchases of publicly funded child day-care shall be made under a contract between the county department of job and family services and a properly licensed, certified, or approved provider. R.C. 5104.32(A) goes on to exempt these contracts by county departments of job and family services from provisions that generally govern county contracts, as follows:

To the extent permitted by federal law and notwithstanding any other provision of the Revised Code that regulates state or county contracts or contracts involving the expenditure of state, county, or federal funds, *all contracts for publicly funded child day-care* shall be entered into in accordance with the provisions of this chapter [R.C. Chapter 5104] and *are exempt from any other provision of the Revised Code that regulates state or county contracts or contracts involving the expenditure of state, county, or federal funds.* (Emphasis added.)

Each contract must specify whether the provider will be paid by the county department of job and family services or the Ohio Department of Job and Family Services and must state that it is subject to the availability of state and federal funds. R.C. 5104.32(B)(6) and (7); *see also* R.C. 5104.35 (powers and duties of county departments of job and family services with respect to publicly funded child day-care).

As a creature of statute, a county department of job and family services has only the powers that are granted by the General Assembly, either expressly or by necessary implication. *See State ex rel. Godfray v. McGinty*, 66 Ohio St. 2d 113, 114, 419 N.E.2d 1102 (1981); *Brock v. Lucas County Bd. of Elections*, No. L-03-1072, 2003-Ohio-7256, 2003 Ohio App. LEXIS 6546, ¶ 10 (Lucas County Dec. 31, 2003); 1984 Op. Att’y Gen. No. 84-080, at 2-273. Powers and duties of the county department of job and family services are set forth in R.C. 329.04 and in other provisions of the Revised Code. They include the duty to provide various kinds of services and assistance. R.C. 329.04. The county department of job and family services is given the responsibility of performing duties assigned by the Ohio Department of Job and Family Services regarding the provision of public family services, including the expenditure of funds and provision of services under various federal programs. R.C. 329.04(A); *see also, e.g.*, R.C. 5101.54(A)(8)(e) (administration of federal food stamp program); R.C. 5101.60-.71 (program on elder abuse); R.C. 5101.80-.801 (administration of federal programs under the temporary assistance for needy families block grant); R.C. 5111.012 (establishing eligibility for medical assistance); R.C. 5111.013 (federal women, infants, and children health programs); R.C. 5115.04 (performance of administrative functions for disability financial assistance program); R.C. 5115.13 (performance of administrative functions for disability medical program). *See generally, e.g.*, 1984 Op. Att’y Gen. No. 84-080.

To carry out its functions, the county department of job and family services is authorized to enter into numerous types of contracts and cooperative agreements. *See, e.g.*, R.C. 329.04(A)(1)(c) (if designated as the child support enforcement agency, the county department of job and family services may contract with other government or private entities for the performance of child support enforcement services); R.C. 329.04(A)(5) (authority for the county department of job and family services to act as the agent of state and federal authorities in any matter relating to family services); R.C. 329.04(A)(10) and R.C. 307.983 (authority for the county department of job and family services to enter into a plan of cooperation with the board of county commissioners to enhance administration of family service programs and workforce development activities); R.C. 329.04(A)(12) and R.C. 330.05 (board of county commissioners may contract with county department of job and family services for county department to be workforce development agency); R.C. 5104.32 (county department of job and family services may contract for the purchase of child day-care); R.C. 5153.16(C)(2)(a)(i) (contracts between county department of job and family services and public children services agency); *see also* 2002 Op. Att’y Gen. No. 2002-039, at 2-250 to 2-251. The county director of job and family services, having full charge of the county department of job and family services, may act on behalf of the department in entering into these contracts and agreements. *See* R.C. 329.02; R.C. 329.04.⁵

⁵Many of the powers and duties of the county department of job and family services involve the expenditure of state and federal funds, and the county funding arrangements reflect that fact. Pursuant to R.C. 329.09, state or federal moneys received by a county for certain state or federal programs or other welfare activity are “considered appropriated for the purposes for which such moneys were received.” Various funds are established in the county treasury to account for funds appropriated for different purposes. For example, R.C. 5101.161 requires each county to establish a special fund in the county treasury known as the public assistance fund and to make payments for public assistance expenditures from that fund. *See also* R.C. 5101.144 (children services fund). The Ohio Department of Job and Family Services distributes state and federal funds to the counties for various purposes. *See, e.g.*, R.C. 5101.14; R.C. 5101.16; R.C. 5101.161; R.C. 5101.46; *see also, e.g.*, R.C. 5107.03

In addition, the county department of job and family services has express authority to:

[e]xercise any powers and duties relating to family services duties⁶ or workforce development activities imposed upon the county department of job and family services by law, by resolution of the board of county commissioners, or by order of the governor, when authorized by law, to meet emergencies during war or peace

R.C. 329.04(A)(7) (footnote and emphasis added). The power of the board of county commissioners to assign responsibilities to the county department of job and family services by resolution is established in R.C. 329.04(B), which states, in part: "The board may assign to the county department any power or duty of the board regarding family services duties and workforce development activities."⁷ See, e.g., R.C. 307.982 (with certain limitations, authorizing the board of county commissioners to contract with a private or government entity for the entity to perform a family services duty or workforce development activity on behalf of a county family services agency or workforce development agency). See generally, e.g., R.C. 5101.141; R.C. 5101.16; R.C. 5101.20; R.C. 5101.21; R.C. 5101.801.

Further, the county department of job and family services may, by resolution of the board of county commissioners and agreement of another public body, assume responsibility for the administration of state or local family services duties vested in that other public body. The county department of job and family services thus may, as provided by agreement, undertake "the performance of any duties and the exercise of any powers imposed upon or vested in" another public body with respect to the administration of family services duties. R.C. 329.05.

R.C. 329.04 states that the powers and duties of a county department of job and family services "are, and shall be exercised and performed, under the control and direction of the board of county commissioners." R.C. 329.04(B); see also R.C. 329.02. This requirement governs all powers and duties of the county department, including those imposed by resolution of the board of county commissioners. See, e.g., 1983 Op. Att'y Gen. No. 83-023.

(county department of job and family services may use county funds to increase the amount of cash assistance under the Ohio Works First program); R.C. 5115.04 (Ohio Department of Job and Family Services must advance to county treasurer funds for disability financial assistance payments made by the county department of job and family services). As discussed in note 4, *supra*, spending for some federal programs is specifically exempted from procedures established under state law.

⁶The term "[f]amily services duty" is defined by statute to mean "a duty state law requires or allows a county family services agency to assume, including financial and general administrative duties." R.C. 307.981(A)(1)(b). It does not include a duty funded by the United States Department of Labor. *Id.* A county family services agency may be a county department of job and family services, a child support enforcement agency, or a public children services agency. R.C. 307.981(A)(1)(a).

⁷If the new power or duty requires the Ohio Department of Job and Family Services to change its federal cost allocation plan, the county department may not implement the power or duty without the approval of the United States Department of Health and Human Services. R.C. 329.04(B).

Authority of the board of county commissioners to assign responsibilities to the county department of job and family services

Like a county department of job and family services, a board of county commissioners has only the powers that it is granted by law, either expressly or by necessary implication. *See, e.g., State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); 2002 Op. Att'y Gen. No. 2002-031, at 2-206. As discussed above, R.C. 329.04(A)(7), R.C. 329.04(B), and R.C. 329.05 provide express authority for the board of county commissioners to assign certain responsibilities to the county department of job and family services by resolution. The language used in each of these provisions is broad and encompasses the authority to assign responsibilities that require the director of job and family services to exercise the power to contract.

In particular, R.C. 329.04(B) provides express statutory authority for the board of county commissioners to assign to the county department of job and family services "any power or duty of the board regarding family services duties and workforce development activities." *See also* note 6, *supra*. Use of the word "any" indicates that the grant of authority is broad, encompassing any or all powers or duties of the type described, including the power to contract. *See* 1989 Op. Att'y Gen. No. 89-079, at 2-367 ("[u]se of the word 'any' indicates that the statutory language is to be read broadly"); *accord* 1984 Op. Att'y Gen. No. 84-068, at 2-221; *see also Wachendorf v. Shaver*, 149 Ohio St. 2d 231, 240, 73 N.E.2d 370 (1948) (construing "any territory," as used in a statute, to mean any or all territory); *Motor Cargo, Inc. v. Bd. of Township Trs.*, 52 Ohio Op. 257, 259, 117 N.E.2d 224 (C.P. Summit County 1953) ("[i]n construing statutes the word 'any' is equivalent and has the force of 'every' or 'all'."... The word 'any' excludes selection or distinction").

R.C. 329.04(A)(7) similarly authorizes the county department of job and family services to exercise "any powers and duties relating to family services duties or workforce development activities" that are imposed upon the county department by law or by resolution of the board of county commissioners. Again, the inclusive word "any" indicates authority to exercise all types of powers and duties, including the power to contract. The language of R.C. 329.05 authorizing the county department to administer "any state or local family services duty" conferred upon it by agreement is also broad language that includes the power to enter into contracts necessary to exercise any duty so conferred.

Thus, the board of county commissioners is empowered to assign to the county department of job and family services powers and duties regarding family services duties and workforce development activities, including powers and duties that require the county director of job and family services to enter into contracts, and the county director of job and family services is authorized to exercise these powers and perform these duties. The county director thus may enter into such contracts as are reasonably necessary for the performance of the family services duties or workforce development activities assigned to the county department by resolution.⁸

⁸In *State ex rel. Godfray v. McGinty*, 66 Ohio St. 2d 113, 419 N.E.2d 1102 (1981), the Ohio Supreme Court found that a county welfare department (predecessor to a county department of job and family services) was not empowered to contract with another public body for parent location services. At that time, R.C. 329.04 did not expressly authorize a county department to contract with other government agencies for the performance of services authorized under Title IV-D of the Social Security Act; language to that effect was inserted by Am. Sub. H.B. 694 (eff. Nov. 15, 1981), appearing at 1981-1982 Ohio Laws, Part II, 3460, 3617. In the *Godfray* case, the Ohio Supreme Court did not address the question whether the

This result is appropriate because the county director of job and family services is selected for the capacity to administer family services' duties and workforce development activities. Therefore, the county director of job and family services is qualified to exercise judgment and discretion in making decisions and entering into contracts relating to family services duties and workforce development activities, whether those functions are assigned by statute or by resolution of the board of county commissioners. *See* R.C. 329.01; R.C. 329.02; R.C. 329.04.⁹

That the county department of job and family services may exercise contracting authority in a manner independent of the county commissioners is evidenced by the fact that R.C. 329.04(A)(12) and R.C. 330.05 authorize the board of county commissioners to designate the county department of job and family services as a workforce development agency and then enter into a contract with the county department. Similarly, R.C. 329.04(A)(10) and R.C. 307.983 provide authority for the county department of job and family services to enter into a plan of cooperation with the board of county commissioners to enhance the administration of various family service programs. It is clear that there must be two parties to each contract, and that the board of county commissioners cannot simply contract with itself. Thus, it is evident that the county department of job and family services has authority apart from the board of county commissioners to enter into certain contracts.

Further evidence that the county department has authority independent of the board of county commissioners to enter into contracts appears in R.C. 307.86. That provision exempts from county competitive bidding requirements a purchase "made by a county department of job and family services under section 329.04 of the Revised Code [that]

authority to enter into such contracts might be granted by language permitting the board of county commissioners to designate the county department to exercise and perform additional welfare powers and duties (then appearing in R.C. 329.04(F) and now appearing in R.C. 329.04(A)(7) and (B)), or by the language of R.C. 307.85(A) authorizing a board of county commissioners to establish and operate a federal program, because the record was "devoid of any evidence" of authority to enter into the contracts there at issue. *State ex rel. Godfray v. McGinty*, 66 Ohio St. 2d at 114; *see also Brooks v. Montgomery County Welfare Dep't*, No. 80AP-778, 1981 Ohio App. LEXIS 12859 (Franklin County June 9, 1981).

⁹In a well-publicized case involving the delegation of contractual authority, the Franklin County Court of Common Pleas found that contracts entered into by the executive director of the Ohio School Facilities Commission (OSFC) were void because the executive director was without authority to sign and execute the contracts. *Monarch Constr. Co. v. Ohio Sch. Facilities Comm'n*, 118 Ohio Misc. 2d 248, 2002-Ohio-2955, 771 N.E.2d 902 (C.P. Franklin County 2002). That case was reversed on other grounds, with the appellate court stating: "the trial court arguably was correct in concluding that OSFC has failed to follow the specific mandates of the law in approving contracts, as the voting members of OSFC did not vote to approve the contract awarded to Peterson, but instead delegated the authority to OSFC's executive director." *Monarch Constr. Co. v. Ohio Sch. Facilities Comm'n*, 150 Ohio App. 3d 134, 2002-Ohio-6281, 779 N.E.2d 844, ¶ 50 (Franklin County 2002), *appeal denied*, 98 Ohio St. 3d 1511, 2003-Ohio-1572, 786 N.E.2d 62 (2003). The *Monarch* decisions are not controlling in the instant case because the statutes there at issue are significantly different in many respects from those here under consideration. Of particular importance, in the *Monarch* cases there was no statute authorizing the OSFC to delegate contractual authority to the executive director, and no resolution providing for such delegation was currently in effect. *Monarch Constr. Co. v. Ohio Sch. Facilities Comm'n*, 118 Ohio Misc. 2d 248, 2002-Ohio-2955, 771 N.E.2d 902, at ¶ 41, 46-47, 75-76.

consists of family services duties or workforce development activities.” R.C. 307.86(D). Not only does this language affirm that the county department is permitted under R.C. 329.04 to enter into contracts to make purchases for family services duties or workforce development activities, it indicates that competitive bidding standards are different when the county department, rather than the county commissioners, undertakes a purchase, thereby confirming that the two bodies have separate contracting authority.

R.C. 305.25

Having established that the board of county commissioners is empowered by R.C. 329.04(A)(7) and (B) and R.C. 329.05 to assign to the county department of job and family services certain powers and duties relating to family services duties or workforce development activities, we turn now to the question whether R.C. 305.25 applies to contracts entered into by the county director of job and family services to implement these powers and duties. As discussed above, R.C. 305.25 governs the validity of contracts entered into, and orders made, by a board of county commissioners. R.C. 305.25 provides that no contract entered into by the board of county commissioners is valid unless it has been assented to at a regular or special session of the board, and entered in the minutes of the board’s proceedings by the county auditor or the clerk of the board. These are procedural requirements that assure that the board’s approval of the contract is made in an official manner and appears in public records. *See* 1987 Op. Att’y Gen. No. 87-025, at 2-180 (requirements imposed by R.C. 305.25 “are similar to the requirements imposed on all public bodies by the so-called ‘Sunshine Law,’ R.C. 121.22, and the Public Records Law, R.C. 149.43”).

The requirements imposed by R.C. 305.25 are mandatory, and contracts that fail to comply with them have been found invalid. *See, e.g., Buchanan Bridge Co. v. Campbell*, 60 Ohio St. 406, 54 N.E. 372 (1899) (syllabus) (“[a] contract made by county commissioners for the purchase and erection of a bridge in violation or disregard of the statutes on that subject [including R.S. 878, predecessor to R.C. 305.25], is void, and no recovery can be had against the county for the value of such bridge. Courts will leave the parties to such unlawful transaction where they have placed themselves, and will refuse to grant relief to either party”); *Drillex, Inc. v. Lake County Bd. of Comm’rs*, 145 Ohio App. 3d 384, 388, 763 N.E.2d 204 (Lake County 2001) (where there were no minutes indicating compliance with R.C. 305.25, no contract existed); *Knox Elec. Constr., Inc. v. Huron County Landfill*, No. H-92-045, 1993 Ohio App. LEXIS 3289, *5 (Huron County June 30, 1993) (“[i]f a county contract has not jumped through these procedural hoops [established by R.C. 305.25], then the contract is void”); *State ex rel. Hunt v. Fronizer*, 2 Ohio N.P. (n.s.) 373 (C.P. Sandusky County 1904); 1917 Op. Att’y Gen. No. 319, vol. I, p. 839. *But see Kraft Constr. Co. v. Cuyahoga County Bd. of Comm’rs*, 128 Ohio App. 3d 33, 43-47, 713 N.E.2d 1075 (Cuyahoga County 1998) (although no contract was formally adopted in accordance with R.C. 305.25, recovery was allowed on the grounds that the county waived the legal defense prohibiting recovery under the doctrine of unjust enrichment (*quasi-contract*)). *See generally* 1992 Op. Att’y Gen. No. 92-050, at 2-206 (“the General Assembly did not intend for R.C. 305.25 to preclude a purchase at auction”).

R.C. 305.25 and related statutes are meant to ensure that a county cannot be made liable on contracts entered into by a board of county commissioners if there is not compliance with procedural requirements. *Buchanan Bridge Co. v. Campbell*, 60 Ohio St. at 419-420. These requirements are a safeguard against the inadvertent imposition of liability, or the imposition of liability without the full knowledge and consent of the board of county commissioners. *Id.* at 425 (“[i]f such statutes could be evaded, there would always be found

some public servants who would be ready and willing to join in transactions detrimental to the public, but favorable to themselves or some favored friend; and if public officers should be ever so honest, some persistent agent or salesman would impose upon them, and obtain more out of the public treasury than is justly due"); 1917 Op. Att'y Gen. No. 319, vol. I, p. 839 at 841 ("statutes which place restrictions upon the right of public officials to contract were enacted with a view to restrain officials from entering into contracts in a promiscuous way, and were intended to protect the rights of the public in the matter of the expenditure of money derived from taxation").

By its terms, however, R.C. 305.25 applies only to contracts "entered into" by the board of county commissioners, or orders "made by" the board of county commissioners. Therefore, when officials or entities other than the board of county commissioners (including the county department or director of job and family services) enter into contracts, the contracts are not "entered into by the board of county commissioners," as provided in R.C. 305.25. Accordingly, the contracts do not come within the plain language of R.C. 305.25 and are not subject to the provisions of R.C. 305.25. See generally R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); *Wachendorf v. Shaver*, 149 Ohio St. at 232 (syllabus, paragraph 5) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged"); *State ex rel. Hunt v. Fronizer*, 2 Ohio N.P. (n.s.) at 383 ("[t]he statute should be construed so as to give force and effect to the manifest purpose of the Legislature").

Under this straightforward reading of the plain language of R.C. 305.25, when the authority to enter into a contract is lawfully granted to an official or entity other than the board of county commissioners (including the county department or director of job and family services), the provisions of R.C. 305.25 do not apply. This does not mean, however, that no statutes protect the county treasury from unwarranted expenditures. Rather, the official or entity having the authority to contract must comply with those statutory requirements that are applicable to the exercise of the authority of that official or entity.

As discussed above, the county director of job and family services may, by resolution of the board of county commissioners, be given the responsibility of carrying out family services duties and workforce development activities and the authority to enter into contracts necessary to carry out these duties and activities. Contracts made by the county director of job and family services pursuant to this authority are not contracts "entered into by the board of county commissioners" for purposes of R.C. 305.25. Because the board of county commissioners is not entering into the contracts, there is no need for compliance with R.C. 305.25. There must, however, be compliance in each instance with the statutory requirements that apply to a particular contract, such as the requirements of R.C. 5705.41 that govern the certification of available funds and the provisions of R.C. 307.55 and R.C. 319.16 that govern the issuance of warrants and allowance of claims against the county. Cf. note 4, *supra*.

Control and direction by the board of county commissioners

In authorizing the county department of job and family services and its director to exercise powers and duties relating to family services duties or workforce development activities, the board of county commissioners must maintain control and direction over the department and the director. R.C. 329.04(B); 1983 Op. Att'y Gen. No. 83-023; 1956 Op. Att'y Gen. No. 6316, p. 152 at 157 (R.C. 329.04 authorizes the board of county commissioners to

designate the county department to exercise powers in addition to those specifically enumerated in R.C. 329.04, but those additional powers “must also be exercised under the control and direction of the board of county commissioners”). Unlike R.C. 329.02, which requires the board of county commissioners to approve appointments made by the county director of job and family services,¹⁰ R.C. 329.04 does not specify the manner in which control and direction must be maintained over powers and duties relating to family services duties or workforce development activities. Therefore, the board of county commissioners may maintain control and direction over these duties and activities in any reasonable manner within the bounds of its statutory authority. *See, e.g., State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878); 1984 Op. Att’y Gen. No. 84-080, at 2-269 and 2-273. The board may, for example, exercise control and direction over family services duties and workforce development activities (including the execution of necessary contracts) assigned to the county department pursuant to R.C. 329.04(A)(7) and (B) in the same manner in which it exercises that control and direction over other activities of the county department (including the execution of contracts) undertaken pursuant to R.C. 329.04.

As discussed above, the board of county commissioners is required to allow all claims against the county before warrants may be paid, unless the amounts are fixed by law or by an entity with authority to allow the claims. *See, e.g., R.C. 307.55; R.C. 319.16*. Under these provisions, the board of county commissioners may be required to review and allow payments under contracts that it has authorized the county director of job and family services to execute. *See* 1986 Op. Att’y Gen. No. 86-024; 1985 Op. Att’y Gen. No. 85-066 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008).

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, that a board of county commissioners may, by resolution pursuant to R.C. 329.04(A)(7) and (B) or R.C. 329.05, assign to the county department of job and family services powers and duties relating to family services duties or workforce development activities, including the authority for the county director of job and family services to enter into contracts necessary to perform these powers and duties. Contracts made pursuant to this authority are entered into by the county director of job and family services, rather than by the board of county commissioners, and there is no need for compliance with R.C. 305.25. There must, however, be compliance in each instance with the statutory requirements that apply to a particular contract, such as the requirements of R.C. 5705.41 that govern the certification of available funds and the provisions of R.C. 307.55 and R.C. 319.16 that govern the issuance of warrants and allowance of claims against the county.

¹⁰*See, e.g., State ex rel. Belknap v. Lavelle*, 18 Ohio St. 3d 180, 181 n.1, 480 N.E.2d 758 (1985); *Abbott v. Myers*, 20 Ohio App. 2d 65, 251 N.E.2d 869 (Franklin County 1969); 1997 Op. Att’y Gen. No. 97-054, at 2-330 to 2-331; 1983 Op. Att’y Gen. No. 83-023.