

**Note from the Attorney General's Office:**

1957 Op. Att'y Gen. No. 57-1187 was overruled by 1984 Op. Att'y Gen. No. 84-038.

1187

COUNTY COMMISSIONERS—CONTRACT, UNITED STATES DEPT' OF INTERIOR, UNAUTHORIZED—PROGRAM TO CONTROL NUISANCE BIRDS—§ 307.15 RC—*PROVISO*: EXISTING AGREEMENT BETWEEN COMMISSIONERS AND AGENCY QUALIFYING UNDER § 307.15 RC.

## SYLLABUS:

A board of county commissioners is without authority to enter into a contract directly with the United States Department of Interior whereby the latter would provide a program for the control of certain nuisance birds, unless, under Section 307.15, Revised Code, there is an existing agreement between the commissioners and an agency which (1) qualifies as a subdivision under such section, and (2) has authority in its own right to contract with the federal government in effecting such program.

Columbus, Ohio, October 17, 1957

Hon. William E. Didelius, Prosecuting Attorney  
Erie County, Sandusky, Ohio

Dear Sir:

I have before me your communication in which you request my opinion regarding the authority of a board of county commissioners to enter into

a contract directly with The Fish and Wildlife Service of the United States Department of the Interior, whereby the latter would provide a program for the control of certain nuisance birds which are injurious to agriculture. The proposed agreement attached to your communication, I note, provides for the expenditure of certain county funds to obtain such service.

Counties possess only such powers and privileges as may be delegated to or conferred upon them by statute. See *Lake County v. Ashtabula County*, 24 Ohio St., 393; *Portage County v. Gates*, 83 Ohio St., 19. Moreover, any such powers as involve the expenditure of public funds are strictly construed in favor of the public and against the grant of power. See *State ex rel. Bentley Co. v. Pierce*, 96 Ohio St., 44.

None of the statutes here pertinent confer any power, express or necessarily implied, upon the board of county commissioners to engage in the special project under consideration, and I therefore conclude that they possess no independent authority in that respect.

It should be called to your attention that a board of county commissioners is given broad powers in the matter of functions and services on behalf of enumerated subdivisions where the board enters into contracts with the legislative authority of such agencies for the exercise of such powers. Section 307.15, Revised Code, provides as follows:

“The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform or render.

“Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivision directly. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board shall be exercised or per-

formed, the board shall determine and assign such powers and duties. Sections 301.14 to 307.19, inclusive, of the Revised Code, or any agreement authorized by such sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board in pursuance of such agreement. Nor shall the board, by virtue of any agreement entered into under this section, acquire any power to levy taxes within and in behalf of a contracting subdivision unless otherwise provided for by law.”

A somewhat analogous situation was presented in Opinion No. 6136, Opinion of the Attorney General for 1956, page 11, involving the power of the board of county commissioners to enter into agreements with the Secretary of Agriculture of the United States relative to agricultural conservation, development, utilization, and disposal of water. In that opinion it was held in part:

“ A board of county commissioners has the power, under Section 307.15, Revised Code, to enter into service agreements with a soil conservation district in furtherance of soil conservation projects, and upon the execution of such agreement, but not otherwise, it may exercise all the powers and functions possessed by such district, including the power to enter into cooperative agreement with the federal government or an agency thereof as a ‘local organization’ under the provisions of the Federal Watershed Protection and Flood Prevention Act.”

Such conclusion was based on a prior determination that the soil conservation district itself had authority to contract with federal agencies.

In our present situation, no reference is made as to any existing agreement which the board of county commissioners may have with an agency which could qualify as a subdivision under Section 307.15, *supra*. The Secretary of the Interior of the United States is authorized “to cooperate with States, individuals, and public and private agencies, organizations, and institutions” under Title 7, United States Code, Agriculture, Section 426 and by Reorganization Plan II, Section 4 (f), effective July 1, 1939, so far as the federal government is concerned. However, one must look to the state laws for the authority of the state agency.

In the event of (1) an existing agreement between the county commissioners and an agency which could qualify as a subdivision under Section 307.15, Revised Code, and (2) that agency being one which has general authority, in its own right, to contract with the federal government, then, and only in that event, would the board of county commissioners have

authority under Section 307.15, Revised Code, to enter into a cooperative agreement with the federal government for control of nuisance birds. In absence of these two conditions, it is my opinion that the board of county commissioners has no such authority.

In specific answer to your inquiry therefore, it is my opinion that a board of county commissioners is without authority to enter into a contract directly with the United States Department of Interior whereby the latter would provide a program for the control of certain nuisance birds, unless, under Section 307.15, Revised Code, there is an existing agreement between the commissioners and an agency which (1) qualifies as a subdivision under such section, and (2) has authority in its own right to contract with the federal government in effecting such program.

Respectfully,  
WILLIAM SAXBE  
Attorney General