

OPINION NO. 2012-030**Syllabus:**

2012-030

A board of county commissioners does not have authority under R.C. Chapter 307 to grant a tax exemption to a private business as part of a lease agreement. A board of county commissioners may grant a tax exemption to a private business under R.C. 5709.63, R.C. 5709.632, or R.C. 5709.78 provided the requirements of those statutes are satisfied.

To: Anneka P. Collins, Highland County Prosecuting Attorney, Hillsboro, Ohio

By: Michael DeWine, Ohio Attorney General, September 19, 2012

You have requested an opinion about the authority of a board of county commissioners to grant a tax exemption. You have explained that the board of county commissioners entered into a contract in which the board leased land located at the county airport to a private business. The tenant constructed buildings on the land and operates a business there. As part of the contract, the board agreed to “waive property taxes” on the land and buildings that are subject to the lease, a benefit also known as a tax abatement or tax exemption.

It is well established that a board of county commissioners is a creature of statute with only those powers granted by statute or necessarily implied by those powers that are expressly granted. R.C. 305.01; *State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1 and 2); *Elder v. Smith*, 103 Ohio St. 369, 370, 133 N.E. 791 (1921); 2010 Op. Att’y Gen. No. 2010-024, at 2-173. Further, “[a]n exemption from taxation must be clearly and expressly stated in the statute.” *City of Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 91 N.E.2d 480 (1950) (syllabus, paragraph 1), *rev'd on other grounds*,

2 Ohio St. 2d 17, 205 N.E.2d 896 (1965). *See also Toledo Bus. & Prof'l Women's Ret. Living, Inc. v. Bd. of Tax Appeals*, 27 Ohio St. 2d 255, 258, 272 N.E.2d 359 (1971) (the power to determine tax exemptions "is lodged exclusively in the General Assembly, and once it has chosen a specific subject for tax exemption, and defined the criteria, the function of the executive and judicial branches is limited to applying those criteria to a particular case, or to interpreting them if necessary"); 1984 Op. Att'y Gen. No. 84-012, at 2-35 ("while a board of county commissioners is authorized to adopt regulations to facilitate administration of a tax levied pursuant to R.C. 5739.024(A), such a board may not, by rule, enlarge or restrict statutory exemptions"). Therefore, a board of county commissioners may grant a tax exemption as part of a lease only if it has express statutory authority to do so.

The general powers and duties of a board of county commissioners are set forth in R.C. Chapter 307. R.C. 307.09 grants a board of county commissioners broad authority to lease any real property belonging to the county and not needed for public use. This statutory provision, however, does not grant a board of county commissioners authority to grant a tax exemption as part of such a lease. Further, no other provision in R.C. Title 3 (counties) grants a board of county commissioners general authority to grant a tax exemption as part of a lease. Accordingly, we conclude that a board of county commissioners does not have authority under R.C. Chapter 307 to grant a tax exemption to a private business as part of a lease agreement.

We next look to the provisions of R.C. Chapter 5709, which sets forth and defines several different tax exemptions. Several statutory provisions in this chapter authorize a board of county commissioners to grant a tax exemption when specific requirements are satisfied. First, R.C. 5709.61-.69 permit the creation of enterprise zones in order "to encourage businesses to establish, expand, renovate, and occupy facilities and to create jobs within economically distressed zones." 1989 Op. Att'y Gen. No. 89-013, at 2-55. A board of county commissioners may designate proposed enterprise zones in municipal corporations or townships or in unincorporated areas of the county with the consent of the affected legislative authority of the municipal corporation or the board of township trustees. R.C. 5709.63; R.C. 5709.632. After an enterprise zone is created, a board of county commissioners, with the consent of the legislative authority of each affected municipal corporation or of the board of township trustees, is expressly authorized to enter an agreement granting tax exemptions to an enterprise in return for the enterprise agreeing to establish or expand a business within a designated enterprise zone. R.C. 5709.63; R.C. 5709.632; *see also* 1989 Op. Att'y Gen. No. 89-013, at 2-55. Accordingly, where the requirements set forth in R.C. 5709.63 or R.C. 5709.632 have been satisfied, a board of county commissioners may grant a tax exemption to an enterprise located within a designated enterprise zone.

Additionally, R.C. 5709.78(A) authorizes a board of county commissioners to declare, by resolution, public infrastructure improvements to certain parcels of property located in the unincorporated territory of the county to be a public purpose. The statute further authorizes a board to exempt such an improvement from real property taxation as provided therein. R.C. 5709.78(A). R.C. 5709.78(B) authorizes

a board of county commissioners to adopt a resolution creating an incentive district and to declare improvements to parcels within the district to be a public purpose. Parcels located within an incentive district may be exempt from taxation as provided in R.C. 5709.78(B). Accordingly, a board of county commissioners may grant a tax exemption when the requirements set forth in R.C. 5709.78(A) or (B) are satisfied.

Whether a particular business or lease agreement satisfies the conditions set forth in R.C. 5709.63, R.C. 5709.632, or R.C. 5709.78 is a question of fact and cannot be resolved by means of an opinion of the Attorney General. *See* 1990 Op. Att’y Gen. No. 90-020, at 2-78 (“[i]t is inappropriate to use the opinion-rendering function of the Attorney General as a means for making findings of fact”). Rather, the determination of whether a board of county commissioners has the authority to grant a tax exemption to a private business is a question that must be determined on a case-by-case basis at the local level.

We are not aware of any other provisions in the Revised Code that authorize a board of county commissioners to grant a tax exemption. There are, however, various types of tax exemptions throughout the Revised Code. *See* R.C. 1728.10 (community redevelopment corporations); R.C. 3735.67 (community reinvestment areas); R.C. 5709.08 (property of state and public property used exclusive for public purpose are exempt from taxation); R.C. 5709.41 (improvements to property conveyed or leased by a municipal corporation engaged in urban redevelopment). Your question asks only about the authority of a board of county commissioners to grant a tax exemption, and so we have examined only those statutes that provide a board this authority.

Based on the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners does not have authority under R.C. Chapter 307 to grant a tax exemption to a private business as part of a lease agreement. A board of county commissioners may grant a tax exemption to a private business under R.C. 5709.63, R.C. 5709.632, or R.C. 5709.78 provided the requirements of those statutes are satisfied.