

OPINION NO. 77-030**Syllabus:**

(1) The board of county commissioners has authority to terminate an automatic data processing board, established pursuant to R.C. 307.84, by adopting a resolution to that effect.

(2) Upon termination of the county automatic data processing board, the board of county commissioners may continue to purchase data processing equipment as it is authorized to do under R.C. 307.843; R.C. 307.846 does not authorize the board of county commissioners to contract to provide data processing services to other public agencies and officials.

(3) In the absence of a county automatic data pro-

cessing board, county offices may establish their own data processing operations.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William J. Brown, Attorney General, June 7, 1977

I have before me your request for my opinion which poses the following questions:

"1. Does the Board of County Commissioners have the authority to terminate the Automatic Data Processing Board, once it has been established pursuant to O.R.C. Section 307.84?

"2. If so, what would be the procedure for such a termination?

"3. What would be the consequences of such a termination? Specifically, could the Board of County Commissioners, pursuant to O.R.C. Section 307.843 still purchase data processing equipment and also could the Board of County Commissioners contract with other public agencies and officials to perform data processing services as the Automatic Data Processing Board is authorized to do under O.R.C. Section 307.846?

"4. Would other county offices still be required to contract with or use a centralized data processing center or could each establish its own data processing operation?"

With respect to your first question, it is necessary to consider R.C. 307.84, which provides as follows:

"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 [307.84.6], inclusive, of the Revised Code, 'county office' means any officer, department, board, commission, agency, court, or other office of the county."

The terms of the statute are not self-executing. The power to create an automatic data processing board rests exclusively within the discretion of the board of county commissioners.

The principle is well settled in Ohio that the same authority that creates a public office can at any time abolish it, absent a Constitutional restraint. In Thomas v. City of Euclid, 43 Ohio App. 52, (1931) the court stated that the city council, having authority under statute to create by ordinance the office of engineer, could abolish that office by repealing the ordinance. In other words, the power that created the office could abolish it as well.

Although there are no reported decisions in Ohio concerning the issue of whether a board or commission may abolish an office which it creates pursuant to statute, New York's highest court has considered this question. In Keyes v. Monroe County et al., 271 N.Y. 54, (1936), the court held that a board of county supervisors, which was granted permission by statute to create the office of county auditor, had the power to abolish such office at any time. In reaching this conclusion, the court emphasized that the creation of the office was permissive and not mandatory.

As in Keyes, *supra*, the creation of the county automatic data processing board is permissive on the part of the board of county commissioners. Moreover, there is nothing in the Constitution or in R.C. 307.84 that would preclude the county commissioners from abolishing the board at any time after its creation. Therefore, in specific answer to your first question, the board of county commissioners has the authority to abolish or terminate an automatic data processing board that it has created pursuant to R.C. 307.84.

Your second question pertains to the procedure for termination of the board. Once the board of county commissioners decides to exercise the power conferred upon it by R.C. 307.84, it must adopt a resolution in order to establish the automatic data processing board. The General Assembly has specified the means whereby the county commissioners may establish an automatic data processing board. The resolution procedure, a limitation on the county commissioners' authority to establish such a board, is also a limitation on their power to abolish it since the same power which establishes an office may at any time abolish it. Thus, since a resolution must be adopted by the board of county commissioners in order to bring the automatic data processing board into existence, it follows that a resolution must be adopted by that body in order to terminate the board. In specific answer to your second question, the automatic data processing board created pursuant to R.C. 307.84 may be terminated by resolution of the board of county commissioners.

Your third question concerns the consequences of abolishing the county automatic data processing board. In this respect, your primary concern is whether the board of county commis-

sioners could itself purchase data processing equipment pursuant to R.C. 307.843. This section provides as follows:

"The board of county commissioners may purchase, lease, or otherwise acquire any automatic data processing equipment that the board determines is necessary, or that the county automatic data processing board recommends, from funds budgeted and appropriated by the board of county commissioners for such purposes."

It is apparent from a reading of this statute that the board of county commissioners possesses the general power to "purchase, lease, or otherwise acquire" any data processing equipment it deems necessary. Although the statute authorizes the county commissioners to act on the recommendation of the data processing board, neither the existence nor the recommendation of this Board is a condition precedent to the acquisition of such equipment by the commissioners.

You further inquire whether the board of county commissioners possesses the power, similar to that conferred upon the automatic data processing board pursuant to R.C. 307.846, to contract with other public agencies and officials for the purpose of providing data processing services. R.C. 307.846 provides in pertinent part as follows:

"The county automatic data processing board may enter into a contract with the legislative authorities of any municipal corporation, township, port authority, water or sewer district, school district, library district, county law library association, health district, park district, soil and water conservation district, conservancy district, other taxing district, regional council established pursuant to Chapter 167. of the Revised Code, or otherwise or with the board of county commissioners or the automatic data processing board of any other county, or with any other federal or state governmental agency, and such authorities may enter into contracts with the county automatic data processing board, to provide automatic data processing services to any of them. . . ."

In 1971 Op. Att'y Gen. No. 71-086, I had occasion to consider whether a county automatic data processing board had the authority to contract to provide data processing services to an area-wide coordinating agency.

In that Opinion I stated:

"The paramount object of the General Assembly in authorizing the establishment of county automatic data processing boards was obviously the promotion of efficiency in the operations of county and local governments. . . ."

Once the county automatic data processing board has been abolished, there is no authority under R.C. 307.846 for the county commissioners to enter into contracts to provide data processing services. The intention of the General Assembly in enacting that section was to empower a centralized board to provide uniform, quality data processing services to the agencies and officials enumerated therein, including the board of county commissioners and the data processing boards of other counties. While R.C. 307.846 authorizes one county's board of county commissioners to buy data processing services from either its own county's data processing board or from another county's automatic data processing board, it does not authorize the board of county commissioners to sell or provide these services to another county's data processing board or any other agency or official. The power to provide such services is vested exclusively within the county automatic data processing board. If this board of county commissioners wishes to provide data processing services to the agencies enumerated in R.C. 307.846, it must establish an automatic data processing board for that purpose. In specific answer to your question, the board of county commissioners may not contract with agencies and officials to provide data processing services; this function is exclusively within the power of the automatic data processing board.

Your final question asks whether, upon termination of the automatic data processing board, county offices would be required to contract with or use a centralized data processing center as opposed to each office establishing its own data processing operation. Since R.C. 307.84 does not mandate the establishment of an automatic data processing board by the board of county commissioners, if the latter body elects not to establish such a board, or to terminate one that has been established, there is no section in the Revised Code which contravenes a county office from establishing its own, non-centralized data processing operation. Indeed, this power is implicitly recognized in the second paragraph of R.C. 307.84 which provides that once the board meets, no county office shall acquire data processing equipment without prior board approval. Thus, in the absence of an automatic data processing board, any county office may purchase, lease, operate, or contract for the use of automatic data processing equipment . . ." without restriction. By way of responding to your question, in the absence of a county automatic data processing board or upon termination of such board, a county office may establish its own data processing operation.

In summary, it is my opinion and you are so advised that:

(1) The board of county commissioners has authority to terminate an automatic data processing board, established pursuant to R.C. 307.84, by adopting a resolution to that effect.

(2) Upon termination of the county automatic data processing board, the board of county commissioners may continue to purchase data processing equipment as it is authorized to do under R.C. 307.843; R.C. 307.846 does not authorize the board of county commissioners to contract to provide data processing services to other public agencies and officials.

(3) In the absence of a county automatic data processing board, county offices may establish their own data processing operations.