

November 15, 2018

The Honorable Dennis P. Will  
Lorain County Prosecuting Attorney  
225 Court Street, 3rd Floor  
Elyria, Ohio 44035

SYLLABUS:

2018-029

1. A board of county commissioners that satisfies the conditions set forth in R.C. 307.851 may enter into a contract with a for profit or nonprofit corporation or association for the provision of addiction services or recovery supports.
2. A board of county commissioners may use the proceeds of a tax levied under R.C. 5705.191 to pay for addiction services and recovery supports provided by a corporation or association with whom the board has entered into a contract pursuant to R.C. 307.851.
3. A board of county commissioners may not use the proceeds of a tax levied under R.C. 5705.221 to pay for addiction services and recovery supports provided by a corporation or association with whom the board has entered into a contract pursuant to R.C. 307.851.



# MIKE DEWINE

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OPINION NO. 2018-029

The Honorable Dennis P. Will  
Lorain County Prosecuting Attorney  
225 Court Street, 3rd Floor  
Elyria, Ohio 44035

Dear Prosecutor Will:

We have received your request regarding the authority of a board of county commissioners to enter into contracts for the provision of addiction services. Lorain County is part of a single-county alcohol, drug addiction, and mental health service district. *See* R.C. 340.01(B) (“[a]n alcohol, drug addiction, and mental health service district shall be established in any county or combination of counties having a population of at least fifty thousand”). The Lorain County Alcohol, Drug Addiction, and Mental Health Service District (the “Lorain County ADAMHS District”) is served by the Lorain County Board of Alcohol and Drug Addiction Services (the “Lorain County ADAS Board”) and the Lorain County Board of Mental Health. *See* R.C. 340.021. Pursuant to the provisions in R.C. Chapter 340, the Lorain County ADAS Board is responsible for, among other things, entering into contracts with “[c]ommunity addiction services providers for addiction services and recovery supports.” R.C. 340.036(A)(2); *see also* R.C. 340.01(A)(1) (“[a]s used in this chapter: ... ‘addiction services,’ ... ‘community addiction services provider,’ ... and ‘recovery supports’ have the same meanings as in [R.C. 5119.01]”); R.C. 5119.01(A)(2) (“[a]ddiction services’ means services, including intervention, for the treatment of persons with alcohol, drug, or gambling addictions, and for the prevention of such addictions”); R.C. 5119.01(A)(7)(a)-(c) (defining “community addiction services provider” as “an agency, association, corporation, individual or program that provides” certified “[a]lcohol and drug addiction services,” services for gambling addiction, or “[r]ecoverly supports that are related to alcohol and drug addiction services or gambling addiction services and paid for with federal, state, or local funds administered by the department of mental health and addiction services or a[n] [ADAMHS Board]”); R.C. 5119.01(A)(16) (“[r]ecoverly supports’ means assistance that is intended to help an individual who is an alcoholic or has a drug addiction or mental illness, or a member of such an individual’s family, initiate and sustain the individual’s recovery from alcoholism, drug addiction, or mental illness”).

The Lorain County Board of Commissioners plans to convert a county nursing home into a rehabilitation facility and lease the building to an addiction services and recovery supports provider that will serve people with opioid and other alcohol and drug addictions. The Lorain

County Board of Commissioners has levied a tax pursuant to R.C. 5705.221 “for general human or social services, hospitalization and health purposes including facilities.” You ask whether, under these circumstances, the Lorain County Board of Commissioners may enter into a contract with a private entity for the provision of addiction services or recovery supports. If the Lorain County Board of Commissioners has such authority, you ask whether the Board may use revenue derived from the tax levied pursuant to R.C. 5705.221 to pay for those services.<sup>1</sup>

### **The Authority of a Board of County Commissioners to Contract for the Provision of Addiction Services and Recovery Supports**

The General Assembly has established a unified system for the provision of addiction and mental health services and recovery supports in the State of Ohio through the enactment of R.C. Chapter 340. *See* R.C. 340.011(A)(1) (“[t]his chapter shall be interpreted to,” among other things, “[e]stablish a unified system of treatment for mentally ill persons and persons with addictions”); 1994 Op. Att’y Gen. No. 94-095, at 2-472 (“[a]s noted in R.C. 340.011, one of the primary purposes of the provisions of R.C. Chapter 340 is the establishment of a unified system of treatment for mentally ill persons”). R.C. 340.01(B) requires “in any county or combination of counties having a population of at least fifty thousand,” there be established “[a]n alcohol, drug addiction, and mental health service district” (“ADAMHS District”). An ADAMHS District comprising one county is commonly referred to as a “single-county” district. An ADAMHS District comprising more than one county is referred to as a “joint-county” district. *See* R.C. 340.01(B). The Lorain County ADAMHS District is a single-county district.

An ADAMHS District is governed by a board of alcohol, drug addiction, and mental health services (“ADAMHS Board”), or, alternatively, by an alcohol and drug addiction services board and a community mental health board. *See* R.C. 340.02(A); R.C. 340.021(A); 2013 Op. Att’y Gen. No. 2013-005, at 2-44. The members of these governing boards are appointed by either the board of county commissioners or the Director of Mental Health and Addiction Services. *See* R.C. 340.02(B); R.C. 340.021. “A community health board has all the powers, duties, and obligations of a[n] [ADAMHS Board] with regard to mental health services,” and “[a]n alcohol and drug addiction services board has all the powers, duties, and obligations of a[n] [ADAMHS Board] with regard to addiction services.” R.C. 340.021(A). The Lorain County ADAMHS District is served by the Lorain County ADAS Board and the Lorain County Board of Mental Health. Therefore, the provisions in R.C. Chapter 340 that govern the duties and authority of an ADAMHS Board with regard to addiction services govern the duties and authority of the Lorain County ADAS Board.

The provisions in R.C. Chapter 340 confer upon an ADAMHS Board “a variety of duties concerning the evaluation, development, coordination, and funding of programs relating to alcohol, drug addiction, and mental health services” and recovery supports. 1999 Op. Att’y Gen. No. 99-030, at 2-199. For example, an ADAMHS Board is required to establish “a community-

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<sup>1</sup> We have rephrased your questions for ease of organization and analysis.

based continuum of care” designed to “make addiction services and mental health services available to the residents of its service district.” Ohio Legislative Serv. Comm’n, Final Bill Analysis (Sub. S.B. 319, eff. Apr. 6, 2017). A community-based continuum of care must include certain prevention, wellness, outpatient, and inpatient services, as well as services and supports for addiction recovery. *See* R.C. 340.032(A)(1)-(9). A community-based continuum of care is required to include specific “addiction services and recovery supports for all levels of opioid and co-occurring drug addiction,” including recovery housing, as set forth in R.C. 340.034.<sup>2</sup> R.C. 340.033.

As “the community addiction ... planning agency for the county,” an ADAMHS Board also is required to “[e]valuate the need for facility services, addiction services, ... and recovery supports,” R.C. 340.03(A)(1)(a); “develop and submit to the department of mental health and addiction services a community addiction and mental health plan” that highlights the needs of certain residents of the district,<sup>3</sup> R.C. 340.03(A)(1)(c); and “[p]romote, arrange, and implement working agreements with” private and public “social agencies,” R.C. 340.03(A)(1)(d). An ADAMHS Board also is responsible for evaluating services provided by community addiction services providers to ensure residents of the district are receiving high quality and effective services. *See* R.C. 340.03(A)(3); R.C. 340.03(A)(4); R.C. 340.03(A)(12).

The responsibility and authority of an ADAMHS Board to contract for addiction services and recovery supports is set forth in R.C. 340.036(A). That statute states, in relevant part:

Subject to division (B) of this section<sup>4</sup> and rules adopted by the director of mental health and addiction services after consultation with relevant

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<sup>2</sup> R.C. 340.034 regulates the recovery housing required by R.C. 340.033 and sets forth the limited circumstances under which an ADAMHS Board may own and operate recovery housing. An ADAMHS Board may own and operate recovery housing only if “[t]he board owns and operates the recovery housing on July 1, 2017,” R.C. 340.034(C)(1); “[t]he board utilizes local funds in the development, purchase, or operation of the recovery housing,” R.C. 340.034(C)(2); or “[t]he board determines ... there is a need ... to assume the ownership and operation of the recovery housing ... and the board considers the assumption of ownership and operation of the recovery housing to be in the best interest of the community,” R.C. 340.034(C)(3).

<sup>3</sup> In ADAMHS Districts “that have separate alcohol and drug addiction services and community mental health boards, the alcohol and drug addiction services board shall submit a community addiction plan and the community mental health board shall submit a community mental health plan.” R.C. 340.03(A)(1)(c).

<sup>4</sup> R.C. 340.036(B) prohibits an ADAMHS Board from contracting with facilities and community addiction services providers that have not met established certification standards and other criteria or competencies.

constituencies as required by [R.C. 5119.21(A)(10)], each [ADAMHS Board] shall enter into contracts with all of the following:

- (1) Public and private facilities for the operation of facility services;
- (2) Community addiction services providers for addiction services and recovery supports. (Footnote added.)

R.C. 340.036(A). The use of the word “shall” in R.C. 340.036(A) indicates that the duty of an ADAMHS Board to enter into such contracts is mandatory. *See generally State ex rel. Plain Dealer Publ’g Co. v. Barnes*, 38 Ohio St. 3d 165, 167, 527 N.E.2d 807 (1988) (“[t]he word ‘shall’ establishes a mandatory duty, absent a clear and unequivocal intent that it receive a construction other than its ordinary meaning”).

There is no question that an ADAMHS Board has authority to enter into contracts with community addiction services providers for addiction services and recovery supports. Rather, you ask whether a board of county commissioners possesses the authority to enter into contracts for the provision of addiction services and recovery supports on behalf of the county or whether the authority to enter in such contracts is within the exclusive power of an ADAMHS Board.

A board of county commissioners is a creature of statute, and therefore “may exercise only those powers expressly conferred on it by statute or necessarily implied therefrom.” 1989 Op. Att’y Gen. No. 89-087, at 2-413. The General Assembly has conferred the authority to plan, administer, evaluate, and contract for addiction services and recovery supports primarily upon ADAMHS Districts and their governing boards. The administration of addiction services and recovery supports in this manner helps accomplish the goals set forth by the legislature to “[e]stablish a unified system of treatment for ... persons with addictions,” R.C. 340.011(A)(1); “[e]stablish a community support system available for every [ADAMHS District],” R.C. 340.011(A)(2); “[e]ncourage the development of high quality, cost effective, and comprehensive services, including culturally sensitive services,” R.C. 340.011(A)(4); “[e]nsure that services provided meet minimum standards established by the director of mental health and addiction services,” R.C. 340.011(A)(6); “[p]romote the delivery of high quality and cost-effective addiction and mental health services,” R.C. 340.011(A)(7); and “[p]romote the participation of persons receiving mental health services and addiction services in the planning, delivery, and evaluation of these services,” R.C. 340.011(A)(8).

Although the responsibility to plan for and provide addiction services and recovery supports throughout an ADAMHS District rests primarily with an ADAMHS Board, a board of county commissioners, as the governing authority of the county, is authorized, in some respects, to participate in the planning and provision of such services. A board of county commissioners appoints members of an ADAMHS or alcohol and drug addiction services board, R.C. 340.02(B); R.C. 340.21, receives from the ADAMHS Board “an annual report of the addiction services, mental health services, and recovery supports under the jurisdiction of the [ADAMHS Board], including a fiscal accounting,” R.C. 340.03(A)(9), and is authorized to levy taxes on behalf of the ADAMHS District and appropriate money thereto, R.C. 340.07; R.C. 5705.19; R.C. 5705.191; R.C. 5705.221. Significantly, a board of county commissioners also may contract for

the provision of addiction services and recovery supports under the limited circumstances set forth in R.C. 307.851.

R.C. 307.851(A) provides:

Notwithstanding anything to the contrary in the Revised Code, a board of county commissioners of a county that has enacted a tax levy under [R.C. 5705.191], in addition to exercising the other powers granted to a board of county commissioners, may enter into a contract with any corporation or association, whether the corporation or association is for profit or nonprofit, for that corporation or association to provide the services described in this section and for the county to pay for those contracted services with the proceeds of that tax levy, if the proceeds from that tax levy are used only for the purpose or purposes for which the tax was levied. Services for which a contract may be entered into under this section are any or all health and human services or social services provided to the residents of the county.

R.C. 5705.191 authorizes a board of county commissioners to submit to the electors for approval a levy in excess of the ten-mill limitation<sup>5</sup> to supplement the general fund of the county for the purpose of making appropriations for, among other things, “human or social services, ... welfare, hospitalization, health, and support of general hospitals.” Therefore, under R.C. 307.851(A), a board of county commissioners that has levied a tax pursuant to R.C. 5705.191 for human or social services, welfare, hospitalization, health, and support of general hospitals, may enter into a contract with any for profit or nonprofit corporation or association in which the corporation or association agrees to provide health and human services or social services for the county. R.C. 307.851(A) authorizes the board of county commissioners to “pay for those contracted services with the proceeds of that tax levy, if the proceeds from that tax levy are used only for the purpose or purposes for which the tax was levied.”<sup>6</sup>

Addiction services and recovery supports fall well within the meaning of “health and human services” as that phrase is used in R.C. 307.851. When the General Assembly first

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<sup>5</sup> The total amount of state and local taxes levied on real property may not exceed ten mills on each dollar of the property’s true value in money, except for those taxes that have been specifically authorized to be levied in excess thereof. Ohio Const. art. XII, § 2; R.C. 5705.02. A mill is a tenth part of one cent. *Black’s Law Dictionary* 1008 (7th ed. 1999). This rule is known as the “ten-mill limitation.” See R.C. 5705.02.

<sup>6</sup> A tax levied under R.C. 5705.191 is considered a “special” rather than a “general” levy. See 1963 Op. Att’y Gen. No. 154, p. 240. “[T]axes generated by a special levy ... must be deposited into a special fund for each such levy” and “used for that special purpose, as identified by the resolution of the levying jurisdiction.” *Fisher v. Amberley Vill.*, Hamilton App. No. C-140081, 2015-Ohio-2384, at ¶38.

enacted R.C. 307.851, division (A)(1) of the statute specifically authorized a board of county commissioners to enter into a contract for the provision of “alcohol, drug addiction, and mental health services.” 1995-1996 Ohio Laws, Part I, 1062 (Am. Sub. H.B. 117, eff. June 30, 1995). The General Assembly removed the express reference to “alcohol, drug addiction, and mental health services” from the language of R.C. 307.851(A) in 1999-2000 Ohio Laws, Part II, 2474 (Am. Sub. H.B. 283, eff. June 30, 1999), not in an effort to rescind the authority of a board of county commissioners to enter into contracts for the provision of such services, but to expand the types of services for which a board of county commissioners could contract under the statute. As explained in the Final Bill Analysis:

Under former law, a board of county commissioners in a county that had enacted a property tax levy to supplement the county general fund for purposes of public assistance, human or social services, relief, welfare, hospitalization, health, or the support of general or tuberculosis hospitals was permitted to enter into a contract with any profit or nonprofit corporation or association to provide particular services, funded with the proceeds of the levy. Those services were (1) alcohol, drug addiction, and mental health services, ... and (3) public health services.

...

The act authorizes a board of county commissioners to enter into a contract with any profit or nonprofit corporation or association to provide any or all health and human services or social services provided to county residents (rather than just the specific services described in items (1), (2) and (3) ... above), funded with the proceeds of a tax levy approved for the purposes of public assistance, human or social services, relief, welfare, hospitalization, health or the support of general or tuberculosis hospitals.

Ohio Legislative Serv. Comm’n, Final Bill Analysis (Am. Sub. H.B. 283, eff. June 30, 1999). Therefore, under R.C. 307.851(A), a board of county commissioners that has levied a tax pursuant to R.C. 5705.191 for human or social services, welfare, hospitalization, health, and support of general hospitals, may enter into a contract with any for profit or nonprofit corporation or association in which the corporation or association agrees to provide addiction services or recovery supports for the county.

Before a board of county commissioners may enter into a contract as provided in R.C. 307.851(A), R.C. 307.851(B) requires a board of county commissioners to notify the presiding ADAMHS Board “of the board of county commissioner’s intention to enter into” the contract. The ADAMHS Board “has thirty days in which to inform the board of county commissioners of its intention to provide the services itself or authorize the board of county commissioners to” go forward with the proposed contract. R.C. 307.851(B). R.C. 307.851(C) delineates terms that shall be included in a contract entered into by a board of county commissioners under R.C. 307.851(A).

As set forth above, R.C. 307.851 provides a board of county commissioners with the authority to enter into a contract for the provision of addiction services and recovery supports on behalf of the county, if (1) the board of county commissioners has levied a tax under R.C. 5705.191 for human or social services, welfare, hospitalization, health, and support of general hospitals (or more specifically, for the purpose of entering into a contract for the provision of addiction services and recovery supports) and uses the revenue derived therefrom to pay for the services; (2) such contract is approved by the ADAMHS Board of the ADAMHS District of which the county is a part pursuant to R.C. 307.851(B); and (3) the board of county commissioners includes within the contract the terms specified in R.C. 307.851(C). No other provision in R.C. Chapters 340 and 307 or any other chapter of the Revised Code authorizes a board of county commissioners to enter into a contract for the provision of addiction services or recovery supports.

Accordingly, in response to your first question, we conclude that a board of county commissioners that satisfies the conditions set forth in R.C. 307.851 may enter into a contract with a for profit or nonprofit corporation or association for the provision of addiction services or recovery supports.

**The Authority of a Board of County Commissioners to Use Revenue Derived from a Tax Levied Under R.C. 5705.221**

Your second question asks whether a board of county commissioners that has entered into a contract with an entity for the provision of addiction services or recovery supports may use revenue derived from a tax levied pursuant to R.C. 5705.221 to pay for those services. We concluded, in response to your first question, that a board of county commissioners may enter into a contract for the provision of addiction services or recovery supports only under the circumstances set forth in R.C. 307.851. R.C. 307.851(A) authorizes a board of county commissioners to enter into a contract for the provision of such services and pay for those services with the proceeds of a tax levied under R.C. 5705.191. R.C. 307.851 does not authorize a board of county commissioners to pay for the contracted for services with the proceeds of a tax levied under R.C. 5705.221.

R.C. 5705.221 is a special levy that authorizes a board of county commissioners to levy a tax in excess of the ten-mill limitation for the benefit of an ADAMHS District.<sup>7</sup> *See Pal v. Budget Comm'n*, 74 Ohio St. 3d 196, 198, 658 N.E.2d 244 (1996) (“R.C. 5705.221(A) authorizes the county commissioners to levy a tax in excess of the ten-mill limitation for the benefit of [an ADAMHS District]. Thus, while the ... levy passed by the Hamilton County voters was a levy

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<sup>7</sup> A “special levy” is “a levy for a specific purpose, as opposed to a general levy for current expenses.” 2013 Op. Att’y Gen. No. 2013-005, at 2-50 (quoting 2011 Op. Att’y Gen. No. 2011-009, at 2-72). “A special levy’s purpose may be limited to a particular use by the authorizing statute and further limited by the language of the levy resolution or ballot.” *Id.* at 2-51.



proposed by the County Commissioners, it was a levy to fund the Mental Health Board”); 2013 Op. Att’y Gen. No. 2013-005, at 2-52 (“[a] tax levied pursuant to R.C. 5705.221(A) is a special levy as the purpose for which the tax is imposed is restricted to providing funds for expenses related to alcohol, drug addiction, and mental health services”). “Revenue collected as a result of a special levy must be credited to a special fund and used only for the purpose for which the levy was imposed.” 2013 Op. Att’y Gen. No. 2013-005, at 2-51; *see also* R.C. 5705.10(C). R.C. 5705.221(A) states, in pertinent part:

At any time, the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county’s [ADAMHS District] established pursuant to [R.C. Chapter 340], ... and that it is necessary to levy a tax in excess of such limitation for the operation of community addiction services providers and community mental health services providers and the acquisition, construction, renovation, financing, maintenance, and operation of alcohol and drug addiction facilities and mental health facilities.

As the foregoing statutory language demonstrates, a board of county commissioners may only levy taxes under R.C. 5705.221(A) to fund the financial requirements of the ADAMHS District of which the county is a part. A board of county commissioners does not have authority to levy a tax pursuant to R.C. 5705.221(A) for the use of the county, generally.

Accordingly, in response to your second question, we conclude that a board of county commissioners may not use the proceeds of a tax levied under R.C. 5705.221 to pay for the addiction services and recovery supports provided by a corporation or association with whom the board has entered into a contract pursuant to R.C. 307.851.

### **Conclusions**

In sum, it is our opinion, and you are hereby advised that:

1. A board of county commissioners that satisfies the conditions set forth in R.C. 307.851 may enter into a contract with a for profit or nonprofit corporation or association for the provision of addiction services or recovery supports.
2. A board of county commissioners may use the proceeds of a tax levied under R.C. 5705.191 to pay for addiction services and recovery supports provided by a corporation or association with whom the board has entered into a contract pursuant to R.C. 307.851.
3. A board of county commissioners may not use the proceeds of a tax levied under R.C. 5705.221 to pay for addiction services and recovery supports

provided by a corporation or association with whom the board has entered into a contract pursuant to R.C. 307.851.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a prominent initial "M" and a long, sweeping tail.

MICHAEL DEWINE  
Ohio Attorney General