

OPINION NO. 87-014**Syllabus**

1. Under R.C. 5915.06, a board of county commissioners has no mandatory duty to establish civil defense, but may do so in the exercise of its discretion.
2. Where a board of county commissioners has established civil defense under R.C. 5915.06, the board through the director of county disaster services, has direction and control over civil defense planning and response by all agencies of county government, including the county sheriff; but neither the county commissioners nor the director of county disaster services controls or coordinates civil defense planning and response by municipal and township governments.
3. A board of county commissioners may acquire authority over township or municipal civil defense by direct contract with particular local

governments within the county pursuant to R.C. 307.15. (1952 Op. Att'y Gen. No. 1330, p. 284 approved and followed).

4. In the absence of contrary regulations promulgated by the governor under R.C. 5915.07, townships and municipalities may transfer responsibility and authority for response to disasters to boards of county commissioners under a plan adopted pursuant to an agreement made in accordance with R.C. 5915.07 provided that both the agreement and the plan are reasonable.

To: John F. Holcomb, Butler County Prosecuting Attorney, Hamilton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 2, 1987

I have before me your request for my opinion regarding the role of the board of county commissioners with respect to emergencies which occur within the county. Your question specifically asks:

Does the Board of County Commissioners have any legal responsibility in the planning and response to emergencies that occur within the county and, if such responsibility exists, is it to the exclusion of or superior to other local officials, such as township trustees, the director of the disaster services agency or the sheriff?

Your letter states that this question was submitted to you by the Director of the Butler County Civil Defense Agency, which is a county-wide civil defense organization established pursuant to R.C. 5915.07. The question results from specific concerns regarding an emergency operation plan developed to deal with potential disasters at the Feed Materials Production Center at Fernald, Ohio. The center processes radioactive uranium.

Your question requires construction of several sections within R.C. Chapter 5915. That chapter provides for civil defense. Authority for local planning for civil defense is granted under R.C. 5915.06 and R.C. 5915.07.¹ R.C. 5915.06 reads as follows:

Each political subdivision of this state may establish local civil defense in accordance with the rules promulgated by the governor. Each county and municipality shall have a director of disaster services who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. He shall coordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of such board and chief

¹ Although R.C. 5915.06 and R.C. 5915.07 speak of regulations promulgated by the Governor, no such regulations are now in force. See 1983 Op. Att'y Gen. No. 83-057, note 3. Therefore, I am unable to discuss the application of such regulations and will limit myself to construction of the statutes.

executive and not inconsistent with rules promulgated by the governor.

R.C. 5915.07 reads as follows:

The board of county commissioners of any county and the legislative authority of all or a majority of the other political subdivisions, including the municipal corporation having the largest population, within such county may enter into an agreement establishing a county-wide organization for civil defense in accordance with such regulations as are promulgated by the governor. A director of disaster services who shall have the responsibility for coordinating the organization, administration, and operation of such county-wide civil defense organization shall be appointed in accordance with and shall be subject to the direction and control prescribed by the regulations promulgated by the governor.

Two or more counties that have established a county-wide organization for civil defense pursuant to this section may, with the consent of the legislative authorities of all or a majority of the political subdivisions of each county involved, including the largest municipal corporation in each county, enter into an agreement in writing establishing a regional organization or authority for civil defense in accordance with such regulations as are promulgated by the governor.

"Civil defense" is defined in R.C. 5915.01, which reads as follows:

(C) "Civil defense" includes all those activities and measures designed or undertaken to minimize the effects upon the civilian population caused or which would be caused by an attack, or other disaster, including all natural and man-made disasters, and to effect emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack, or other disaster. Such term shall include, but shall not be limited to: measures to be taken in preparation for anticipated attack, including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of civil population; measures to be taken during attack, or other disaster, including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications; and measures to be taken following attack, or other disaster, including activities for fire fighting, rescue, emergency, medical, health, and sanitation services, monitoring for specific hazards of special weapons, unexploded bomb reconnaissance, essential debris clearance,

emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities.

R.C. 5915.01(G) reads as follows:

"Natural and man-made disasters" mean any natural phenomenon or act of man which creates a condition of emergency beyond the capability of the affected local government to control and resolve, utilizing its locally available forces and resources, and any imminent threat of widespread or severe damage, personal injury and hardship, or loss of life and property resulting from any natural phenomenon or act of man.

R.C. 5915.01(D) reads as follows: "'Emergency' means any period during which the president or the congress of the United States or the governor has proclaimed that an emergency exists." In applying these sections it must be kept in mind that they are to be construed liberally so that civil defense may be carried out effectively. See 1951 Op. Att'y Gen. No. 168, p. 44.

The Fernald plant is a nuclear fuel processing plant. Such a plant obviously has the potential to create "a condition of emergency beyond the capability of the affected local government to control and resolve." Advance planning for and response to such a "condition of emergency" falls into the category of "activities and measures designed or undertaken to minimize the effects" of such a disaster and therefore fits the definition of "civil defense." R.C. 5915.06 and R.C. 5915.07 confer authority upon local political subdivisions to establish a civil defense plan to deal with such a potential disaster. Further analysis of those sections is necessary to define the responsibility of county commissioners, particularly as it relates to the authority of other local governments within the county.

R.C. 5915.06 states that "[e]ach political subdivision of this state may establish local civil defense in accordance with the rules promulgated by the governor." In 1983 Op. Att'y Gen. No. 83-058, I concluded that this sentence allows but does not require political subdivisions to establish civil defense. R.C. 5915.01 states that "[a]s used in sections 5915.01 to 5915.99 of the Revised Code: ... (F) 'political subdivision' includes a county, township, city, or village." Therefore, under R.C. 5915.06, a board of county commissioners has no mandatory duty to establish civil defense, but may do so in the exercise of its discretion. I must now determine for county governments which do establish civil defense, the extent to which county commissioners may exercise authority over other local officials both inside and outside of county government.

R.C. 5915.06 states that within each county and municipality there shall be a director of disaster services. With respect to counties and municipalities, R.C. 5915.06 expressly defines the duties of the director of disaster services as follows:

He shall coordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of such board [for the counties] and chief executive [for the municipalities] and not inconsistent with the rules promulgated by the governor.

The language of R.C. 5915.06 is clear and unambiguous with respect to county and municipal disaster service directors. Each has authority which is limited to his own political subdivision, and which is subject to the control of the county commissioners or municipal chief executive. With respect to townships, similar statutory authority exists, but it must be implied from a combined reading of R.C. 5915.06 and R.C. 5915.01(F). R.C. 5915.06 allows political subdivisions to establish civil defense and R.C. 5915.01(F) includes townships within the definition of "political subdivision." One of my predecessors interpreted these sections as giving township trustees the authority to appoint a director of civil defense, and discretion in the manner of his selection. 1955 Op. Att'y Gen. No. 5562, p. 322. It was implicit in that opinion, and axiomatic to its conclusion, that the board of township trustees could subject such director to its direction and control. Addressing your question, the express language of R.C. 5915.06 gives the board of county commissioners control and discretion over the county disaster services director.² The county disaster services director, in turn, has the authority to "...coordinate the organization, administration, and operation..." of civil defense for all of county government, including authority over the county sheriff.³ The definition of civil defense includes both planning and response. So the county commissioners, through the disaster

² The county disaster services director is not the same position as the director of the county-wide civil defense organization. The county-wide civil defense organization is an entity separate from county government. See 1983 Op. Att'y Gen. No. 83-057.

³ I am aware that R.C. 311.07(B), in part, states that:

The sheriff of a county may call upon the sheriff of any adjoining county, the mayor or other chief executive of any municipal corporation within his county or in adjoining counties, and the chairman of the board of township trustees of any township within his county or in adjoining counties, to furnish such law enforcement or fire protection personnel, or both, together with appropriate equipment and apparatus, as may be necessary to preserve the public peace and protect persons and property in the requesting sheriff's county in the event of riot, insurrection, or invasion.

However, this general language must be read in conjunction with the more specific language of R.C. Chapter 5915. In the event of an attack or a natural or man-made disaster, as these terms are defined in R.C. 5915.01, the sheriff may only exercise his authority subject to the limitations of R.C. Chapter 5915. As I have explained, under R.C. 5915.06 the county director of disaster services coordinates county civil defense under the direction and control of the county commissioners. The activities mentioned in R.C. 311.07(B) are the type which could fit the definition of civil defense as defined in R.C. 5915.01(C). Therefore, during a disaster or attack the sheriff continues to have the authority granted in R.C. 311.07(B), but must exercise that authority under the direction of the county director of disaster services and the county commissioners.

services director, have control over the county government's planning for and response to disasters. However, under R.C. 5915.06 neither the county disaster services director, nor the board of county commissioners, have authority over civil defense planning or response by township or municipal governments within the county. Within the municipalities, R.C. 5915.06 expressly confers that authority upon the municipal disaster services director acting under the direction and control of the chief executive of the municipality. In the townships, such authority rests with a township director of civil defense acting under the direction and control of the board of township trustees.

In addition to authority over civil defense within county government granted directly by R.C. 5915.06, a board of county commissioners may acquire authority over township and municipal civil defense by direct contract with those local governments. The authority for such a contract is granted by R.C. 307.15, which reads, in part, as follows:

The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water 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....

This section applies to civil defense. See 1952 Op. Att'y Gen. No. 1330, p. 284. While R.C. 307.15 is not presently applicable to the situation you present because no such contract exists, the statute does offer a method by which a county may extend the scope of its authority in civil defense matters.

An additional source of authority for combined civil defense planning and response by county, township and municipal governments is found in R.C. 5915.07. That section allows local governments to form a county-wide civil defense organization by agreement. To establish such an organization, the agreement must include the county commissioners and a majority of other political subdivisions within the county, including the municipality with the largest population. Also, R.C. 5915.07 requires that the agreement be in accordance with "such regulations as are promulgated by the governor." As pointed out, no such regulations presently exist. See note one, supra. Because there are no regulations specifying what terms the agreement must have, the agreement may include any reasonable terms. See Jewett v. Valley Ry. Co. 34 Ohio St. 601, 608 (1878)(absent a provision of law specifying how a particular duty is to be carried out, it may be carried out in any reasonable manner); 1983 Op. Att'y Gen. No. 83-057 (absent regulations applicable to R.C. 5915.07, action may be taken in any reasonable manner).

While I have received a copy of your county-wide agreement, I am constrained to point out that my authority to issue

opinions, R.C. 109.14, does not include authority to pass upon the reasonableness of particular agreements or contracts. See 1983 Op. Att'y Gen. No. 83-087. The reasonableness of such agreements or contracts would inevitably rest on issues of fact. Such fact-finding is best done by your office, or ultimately by the judiciary. See Op. No. 83-057.

So long as the agreement is reasonable, the parties are bound by its terms. Your agreement requires the parties to follow any emergency response plan developed by the director of the county-wide organization and approved by an executive committee established by the agreement. The agreement places no restrictions on formulation of a plan. In the absence of such restrictions in the agreement, and in the absence of rules from the governor, the parties to the agreement are free to develop any reasonable plan they wish. See Jewett, supra; Op. No. 83-057. Under your agreement, responsibility and authority for response to disasters could be transferred from the townships and municipalities to the county commissioners so long as the transfer was made as part of a reasonable plan developed by the director and approved by the executive committee. I am, however, without authority to resolve issues of reasonableness, and this response to your question should not be construed as purporting to do so.

It is therefore my opinion, and you are hereby informed that:

1. Under R.C. 5915.06, a board of county commissioners has no mandatory duty to establish civil defense, but may do so in the exercise of its discretion.
2. Where a board of county commissioners has established civil defense under R.C. 5915.06, the board through the director of county disaster services, has direction and control over civil defense planning and response by all agencies of county government, including the county sheriff; but neither the county commissioners nor the director of county disaster services controls or coordinates civil defense planning and response by municipal and township governments.
3. A board of county commissioners may acquire authority over township or municipal civil defense by direct contract with particular local governments within the county pursuant to R.C. 307.15. (1952 Op. Att'y Gen. No. 1330, p. 284 approved and followed).
4. In the absence of contrary regulations promulgated by the governor under R.C. 5915.07, townships and municipalities may transfer responsibility and authority for response to disasters to boards of county commissioners under a plan adopted pursuant to an agreement made in accordance with R.C. 5915.07 provided that both the agreement and the plan are reasonable.