

Note from the Attorney General's Office:

1968 Op. Att'y Gen. No. 68-088 was modified by
1977 Op. Att'y Gen. No. 77-025.

OPINION NO. 68-088**Syllabus:**

1. A political subdivision of the State of Ohio may not designate itself as a community action agency.
 2. A private non-profit corporation may provide by its charter to have the necessary powers to be a community action agency.
 3. The designation of a private non-profit corporation as a community action agency by the board of county commissioners would not be an illegal delegation of authority under Ohio law.
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To: Albert G. Giles, Director, Ohio Bureau of Urban Affairs, Columbus, Ohio
By: William B. Saxbe, Attorney General, June 5, 1968

Your request for my opinion reads in pertinent part:

"As you know, the Ohio Office of Opportunity which is a part of this Department, provides technical assistance with respect to community action activities conducted in the state under the terms of the federal Economic Opportunity Act. The amendments to the Economic Opportunity Act which were enacted by Congress in 1967 (P.L. 90-222), provided major changes in the criteria for determining what bodies and organizations can qualify as community action agencies. As a result, there is some question as to what organizations in Ohio can qualify, under the terms of the act and the implementing statement of policy and administrative procedure to conduct community action programs.

"In order that this Department may be enabled to discharge its duties with respect to community action programs, I should like your opinion on the following questions:

"1. What political subdivisions of the state may comply with the requirements of the act and the statement of policy and administrative procedure so as to qualify as a community action agency?

"2. Under Ohio law, may a private nonprofit organization qualify as a community action agency in accordance with the terms of the Economic Opportunity Act, as amended in 1967 (P.L. 90-222) and the statement of policy and administrative procedure issued by the Office of Economic Opportunity?

"3. Would the designation by a political subdivision of a private nonprofit agency to serve as a community action agency amount to a delegation, by the subdivision, of power or authority?

"4. If the answer to question three is 'yes', would such a delegation be a proper one under Ohio law?

"A copy of the Economic Opportunity Act, as amended, and the implementing statement of policy and administrative procedure is enclosed for your convenience."

Section 210 of Public Law 90-222 reads in pertinent part:

"(a) A community action agency shall be a State or political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or a public or private nonprofit agency or organization which has been designated

by a State or such a political subdivision or combination of such subdivisions, which -

"(1) has the power and authority and will perform the functions set forth in section 212, including the power to enter into contracts with public and private nonprofit agencies and organizations to assist in fulfilling the purposes of this title, and

"(2) is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently designated as a community action agency by the Director.

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"(d) The Director may designate and provide financial assistance to a public or private nonprofit agency as a community action agency in lieu of a community action agency designated under subsection (a) for activities of the kind described in this title where he determines (1) that the community action agency serving the community has failed, after having a reasonable opportunity to do so, to submit a satisfactory plan for a community action program which meets the criteria for approval set forth in this title, or to carry out such plan in a satisfactory manner, or (2) that neither the State nor any qualified political subdivision or combination of such subdivisions is willing to be designated as the community action agency for such community or to designate a public or private nonprofit agency or organization to be so designated by the Director."

It is stated at page 11 of the introductory material as follows:

"In order for a CAA to be recognized by OEO it must among other things,

-have legal authority under State or local law to:

- conduct a community action program;
- contract with and delegate to public or private organizations (including religious organizations) the operation of programs;
- give preference to the employment of poor people and persons over 55 years of age; and
- receive, administer, and transfer funds.

"Where a political jurisdiction lacks one of the vital powers or where it is of insufficient size it may designate another public or private non-

profit agency which would have such powers and be of sufficient size.* * *

Furthermore, Memorandum No. 80 of the Office of Economic Opportunity, Part B, 9, provides as follows:

"9. In connection with the community action program, the community action agency must be free from employment rules and regulations which would prevent:

"(a) The hiring of any qualified poor person, in preference to other qualified persons who are not poor.

"(b) The hiring of any qualified person who lives in the neighborhood or area where the job is to be performed, in preference to other qualified persons who do not live there.

"(c) The employment of persons without any fixed upper age limit.

"(d) Restriction of non-professional jobs to particular types of persons because of their relationship to the program or its beneficiaries (for example, parents of pre-school children, manpower trainees, the elderly, tenants of a particular project or block).

"(e) The hiring of any person who can perform a non-professional job, even though he lacks a formal education.

"(f) The hiring of an otherwise qualified person solely because he has a criminal record, unless that record casts doubt on his ability to perform the particular job with integrity and without danger to the program participants.

"(g) The employment of persons without regard to their race, creed, color, or national origin.

"(h) The payment to program employees of the current Federal minimum wage for employment in interstate commerce (\$1.60 an hour as of February 1, 1968)."

The State of Ohio and all of its political subdivisions are bound by the Ohio Constitution and general laws with respect to their employment practices.

Section 10, Article XV of the Ohio Constitution provides:

"Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

Inasmuch as this provision of the Constitution is not self-executing, the general assembly has provided Chapter 143, Revised Code, as the civil service law of this state. As a result of the preferential employment practices required by the federal guidelines, it would be impossible for the state or any of its political subdivisions to operate as a Community Action Agency.

Chapter 1702, Revised Code, provides for the incorporation of non-profit corporations. There would seem to be no limitations set by law as to the powers or authority of such a corporation. Of course its charter must reflect its purposes and authority. As a result, there would be no reason that a non-profit corporation could not adequately meet the requirements set by the guidelines if its charter so provided.

Your third and fourth questions inquire whether the designation by a political subdivision of a Community Action Agency would constitute an illegal delegation of authority.

Webster's Third New International Dictionary defines "designation" as "the act of indicating or identifying by a mark, letter, or sign or by classification or specification; naming." "Delegation" on the other hand is defined as "the act of investing with authority to act for another."

It is obvious from the definitions, supra, that a designation does not in and of itself transfer any authority from the designator to the designee and this would be especially true where there is not any duty or power which may be delegated by the act.

Furthermore, Section 307.85, Revised Code, reads as follows:

"The board of county commissioners of any county may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted prior to or after the effective date of this act by the congress of the United States, and for such purposes may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state."

This statute, then, specifically and expressly provides authority for the cooperation of counties in federal programs such as the one here under discussion. The county commissioners clearly could designate a private non-profit corporation to be the community action agency. There has been no similar statute passed which gives similar authority to a municipality.

The authority to directly recognize a community action agency where there has been no designation is reserved to the Director of the Office of Economic Opportunity by subsection (d), Section 210, supra.

Therefore, it is my opinion and you are hereby advised that:

1. A political subdivision of the State of Ohio may not designate itself as a community action agency.
2. A private non-profit corporation may provide by its charter to have the necessary powers to be a community action agency.

3. The designation of a private non-profit corporation as a community action agency by the board of county commissioners would not be an illegal delegation of authority under Ohio law.