

OPINION NO. 78-046**Syllabus:**

A joint county community mental health and retardation board may contract for and acquire by purchase real property in its own name, provided that the acquisition serves a purpose authorized by statute.

To: Timothy B. Moritz, M.D., Director, Dept. of Mental Health and Mental Retardation, Columbus, Ohio

By: William J. Brown, Attorney General, July 14, 1978

I have before me your request for my opinion which reads as follows:

May a joint-county district community mental health and retardation board, established pursuant to R.C. Chapter 340, contract for and acquire by purchase real property for a mental health or retardation facility in the board's own name for statutory purposes?

As noted in your letter, I recently had occasion, in 1977 Op. Att'y Gen. 77-057, to consider the question of whether a single county community mental health and retardation board is authorized to purchase real property. It was my conclusion in the Opinion that the power to purchase real property for a mental health or retardation facility is, under the terms of R.C. 307.02, reserved to the board of county commissioners. Consequently it was my conclusion that a single county community mental health and retardation board has neither the express nor the implied power to purchase real property in its own name. Your question, however, arises as to the authority of the board of a joint county community mental health and retardation service district to directly acquire real property for mental health or retardation facilities.

While, under the terms of R.C. 340.03, the duties of a single county mental health and retardation board and those of a joint board are identical, there are several fundamental differences in their structures. R.C. 340.01 provides for the creation of community mental health and mental retardation service districts comprising any county or combination of counties having a population of at least fifty thousand. Where a single county has a population of at least fifty thousand, under the terms of R.C. 340.01, a single county district arises. Where the fifty thousand base is combined from the population of more than one county, a joint county district is created.

For the purpose of taxation, a single county community mental health and service district does not enjoy status distinct from the county it serves. The board of a single county district is not a taxing authority under the terms of R.C. 5705.01. Tax levies for the use of a single county district require action by the board of county commissioners as the taxing authority for the county. In contrast, R.C. 5705.01(A) specifies that for the purposes of R.C. Chapter 5705, a joint county mental health and retardation service district is a subdivision. Thus, a joint county board is, for the purposes of taxation, an entity independent of the counties which comprise it. R.C. 5705.01(C) specifies the board of a joint county community mental health and retardation district as the taxing authority for the district. R.C. 5705.03 empowers the taxing authority of each subdivision to levy taxes annually for the purpose of meeting current expenses and acquiring or constructing permanent improvements. Under the terms of R.C. 5705.01, a permanent improvement includes land and interests therein. While I am of the opinion that the power to purchase real property for the use of a single county board is reserved to the board of county commissioners, I must conclude that the terms of R.C. 5705.01 and 5705.03 vest the authority to acquire real property for the use of a joint county community mental health and retardation service district in the board of the district.

Therefore, in specific answer to your question, it is my opinion and you are so advised, that a joint county community mental health and retardation board may contract for and acquire by purchase real property in its own name, provided that the acquisition serves a purpose authorized by statute.