

**OPINION NO. 79-090****Syllabus:**

Because the State Board of Education is given the express statutory duty of issuing renewal certificates to Emergency Medical Technicians-Ambulance pursuant to R.C. 4731.86(D), and because no procedures for carrying out such duty are prescribed by statute, the Board may formulate procedures to carry out that duty. Such procedures may include a procedure by which the person responsible for emergency medical services is permitted to receive and process renewal certificates for Emergency Medical Technicians-Ambulance in such person's employment.

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**To: Franklin B. Walter, Superintendent of Public Instruction, Department of Education, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 11, 1979**

I have before me your request for my opinion regarding the renewal of certificates of competency for Emergency Medical Technicians-Ambulance (EMT-As). Your question was precipitated by the failure of some EMT-As to return their applications for renewal certification to your office, thereby allowing their certification to lapse. You ask whether applications for renewal may be sent to the local supervisors instead of to each individual EMT-A whose certificate is about to expire. You suggest that sending the applications to the supervisors would expedite the processing and return of the applications to your office.

The statute requiring certification renewal for EMT-As is R.C. 4731.86(D), which provides:

A certificate of competency. . .shall be valid for three years, and may be renewed for successive three year terms by the accrediting body. The accrediting body shall issue renewal certificates, unless it finds that the applicant has not had adequate experience or has not adequately functioned as an EMT-A. . .during the three years immediately preceding such application for renewal.

The accrediting body referred to in the statute is the State Board of Education (hereinafter referred to as "Board"). R.C. 4731.82(G). The Board, therefore, is vested with the authority to determine if an EMT-A is entitled to have his certification renewed.

R.C. 4731.86 is the only applicable statutory provision. It is clear from this statute that the General Assembly imposed upon the Board the duty to issue renewal certificates; however, the General Assembly did not prescribe a procedure for performing the duty.

The Board has promulgated rules regarding certification of EMT-As. Ohio Admin. Code 3301-65-11 states in pertinent part:

A certificate shall be issued by the institution, in a manner prescribed by the superintendent of public instruction to a person upon

satisfactory completion of the minimum training prescribed in rule 3301-65-05.

The certificate shall be issued for a three-year period and may be renewed upon application to the state superintendent of public instruction by submitting evidence of:

(A) Adequate experience as an EMT-A. Evidence of adequate experience or adequately functioning as an EMT-A shall be a statement from the designated head of an active emergency medical service under which the experience was obtained or performance evaluated.

(B) Such additional requirements as necessary to meet standards adopted by the U.S. department of transportation so as to qualify the state of Ohio for federal funds under the "Highway Safety Act of 1966," 80 Stat. 731, 23 USCA 401.

Although the Board has set forth the requirements which the EMT-As must meet before renewal certificates are issued, the Board has not formally adopted a procedure to be followed in the distribution and processing of applications for certificate renewal.

It is necessary to determine whether the Board may formulate such a procedure in the absence of any express statutory authority to do so. It is a well established principle of law that where an express statutory duty is imposed on a public officer or board and no mode of performing the duty is specified, such officer or board has the implied authority to use discretion in formulating a procedure to be followed to carry out the duty. It would be nonsensical to construe a statute as commanding performance of a certain act, but conclude that the power to consummate such act is lacking. Hence, the powers necessary for the efficient exercise of an expressed power may be implied. State ex rel. Copeland v. State Medical Board, 107 Ohio St. 20, 24 and 28-29 (1923); State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 12 (1915); State v. Carter, 67 Ohio St. 422, 435 (1903); Schultz v. Erie County Metropolitan Park District Board, 26 Ohio Misc. 68 (Erie County C.P. 1971); 1978 Op. Att'y Gen. No. 78-034.

Since the General Assembly did not provide a procedure for issuance of renewal certificates in this instance, I must conclude that it intended to leave the formulation of such procedure to the discretion of the Board. The Board, therefore, is free to implement any reasonable procedure that will provide an efficient means of performing the express mandates of the statute.

The discretion of the Board in formulating such a procedure is, however, limited in one respect by the above quoted statute and rule. Although the statute and rule do not set forth a procedure to be used, they do specify which persons are responsible for performing the steps in the certification renewal process. R.C. 4731.86(D) provides that the Board must issue renewal certificates upon finding that an EMT-A is qualified. Rule 3301-65-11 provides that the original certificate of competency will be issued to the person who completes EMT-A instruction and that, upon application by that same person, a renewal certificate will be issued to him or her. The Board may formulate any type of procedure so long as it does not change the duties and powers imposed by statute. In particular, the Board may not change the requirements that the EMT-A himself apply for recertification and that the Board make the determination whether the renewal certificate will be granted.

A review of your proposed procedure indicates that the responsibilities discussed above will be discharged by the appropriate persons or entities. Although you propose that the Board send application forms only to the chiefs of emergency medical service squads, and not to the EMT-As themselves, you are not proposing that the chiefs be permitted to make application on behalf of an EMT-A. Rather, under your proposal an EMT-A will be required to make application on his own behalf. The application form requires the signature of the EMT-A, certifying that

the personal data contained therein is accurate. Since the signature is required, application cannot be made for an individual unless that individual desires to apply. The procedure you suggest, therefore, would not allow someone other than the EMT-A himself to make application in contravention of the existing provisions.

Accordingly, it is my opinion, and you are advised, that because the State Board of Education is given the express statutory duty of issuing renewal certificates to Emergency Medical Technicians-Ambulance pursuant to R.C. 4731.86(D), and because no procedures for carrying out such duty are prescribed by statute, the Board may formulate procedures to carry out that duty. Such procedures may include a procedure by which the person responsible for emergency medical services is permitted to receive and process renewal certificates for Emergency Medical Technicians-Ambulance in such person's employment.