

**Note from the Attorney General's Office:**

1974 Op. Att'y Gen. No. 74-065 was modified by  
1977 Op. Att'y Gen. No. 77-098.

## OPINION NO. 74-065

## Syllabus:

A board of county commissioners has no general statutory authority to contract for the services of a management consultant in every area in which the board is directed by statute to act. It may, however, do so to enable it to cooperate in a federally funded program. And, when a county, pursuant to R.C. Chapter 302., is operating under an alternative form of government, R.C. 302.13 permits the board of county commissioners to authorize the county executive to employ experts and consultants in connection with the administration of the affairs of the county.

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To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio  
By: William J. Brown, Attorney General, August 12, 1974

You have requested my opinion on the following question:

"Do local governments have the power, either expressly by statute or implied necessarily therefrom, to secure management counseling and assistance on a contract basis as the need arises and to pay the cost thereof from public funds?"

References in your request to various statutes, which have recently been amended, suggest that the term "local governments" is used synonymously with counties. I will, therefore, consider your question on that basis.

It is well established that counties and other public entities created by statute, are restricted to those powers which are expressly provided for, or necessarily implied, by statute. State, ex rel. Clarke v. Cook, 103 Ohio St. 465 (1921); State, ex rel. Locher v. Menning, 95 Ohio St. 97 (1916); Gorman v. Heuck, 41 Ohio App. 453 (1931); Opinion no. 74-024, Opinions of the Attorney General for 1974; Opinion No. 73-103, Opinions of the Attorney General for 1973; Opinion No. 73-090, Opinions of the Attorney General for 1973.

With respect to management consultants the General Assembly has on occasion provided the authority to contract for such assistance. See, for example, R.C. 306.35(S), wherein the board of a regional transit authority is empowered to employ and fix the compensation of consulting engineers, superintendents, managers, and other accounting and financial experts necessary for the accomplishment of its purposes.

Similarly, in 1971 the General Assembly enacted S.B. No. 104 (eff. 12-23-71), amending R.C. 307.86 to permit a board of county commissioners to employ a construction project manager or other consultants in connection with the planning and construction of a public building. See also R.C. 305.12, 305.14, 307.06, and 305.20, which authorize a board of county commissioners to retain counsellors and other specialists to perform, or to advise and assist in the performance of, various duties imposed by statute on such a board.

Your request does not identify any specific purpose or duties for which management counselling is desired. Rather you state that "[t]he needed services are of a management nature providing expert advice and assistance, particularly in the fiscal, budgeting, and taxation fields." A review of pertinent sections of the Revised Code reveals no general authority, either express or necessarily implied, which would allow a board of county commissioners to contract for the services of a management consultant in every area, involving fiscal, budgeting or taxation questions, in which the board is directed by statute to act.

On this point I would refer you to Opinion No. 73-090, supra, in which I discussed a township's authority to contract for the services of an insurance consultant. That Opinion reads in part:

"The court in State, ex rel. Locher v. Menning, supra, which is equally applicable to boards of township trustees and boards of county commissioners, stated at page 99 as follows:

"The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed on the county."

"This rationale was reinforced by the court in Gorman v. Heuck, 41 Ohio App. 453 (1931), which held that although county officials lacked the technical knowledge necessary to run their offices efficiently, they could not secure expert advice from a private source and pay for the same with public funds, when such expenditure was neither explicitly nor implicitly authorized by statute. In that case the court did not permit the board of county commissioners to contract for expert services to recommend new, more economical, and more efficient methods of conducting and coordinating various agencies of county government, even though such services would save the county a considerable amount of money. The Gorman case, supra, has been followed consistently in many Opinions of the Attorney General, e.g. Opinion No. 3063, Opinions of the Attorney General for 1953, prohibiting the board of county commissioners from contracting for a survey of the county welfare department where no statutory authority existed for such a survey; Opinion No. 2188, Opinions of the Attorney General for 1961; Opinion No. 70-003, Opinions of the Attorney General for 1970; and Opinion No. 71-092, supra."

Applying the rationale in Gorman v. Heuck, supra, I must, therefore, conclude that a board of county commissioners has no general statutory authority which would allow it to contract for a manage-

ment consultant in every area in which the board is directed by statute to act.

It should be noted, however, that the board of county commissioners has authority to cooperate in federal programs enacted by Congress. This appears in R.C. 307.85 which provides 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 August 23, 1965 by the congress of the United States, and for such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state."

In the light of this Section I held in Opinion No. 71-092 that a county may contract for a study to enable it to take part in such a federal program.

Furthermore, the general rule set out above would not apply in the case of a county which has adopted an alternative form of county government pursuant to R.C. Chapter 302. R.C. 302.01 reads:

"The electors of any county may adopt an alternative form of county government authorized by the provisions of sections 302.01 to 302.24, inclusive, of the Revised Code. Upon adoption as provided by such sections, said alternative form of government shall take the place of the form of government then existing in such county and the provisions of sections 302.01 to 302.24, inclusive, of the Revised Code, applicable to the adopted alternative form of government shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions."

And R.C. 302.13 provides in pertinent part that:

"Pursuant to and in conformity with the constitution of Ohio and without limiting the powers and duties otherwise vested in the board of county commissioners, the board may:

" \* \* \* \* \* "

"(J) Authorize the county executive to employ experts and consultants in connection with the administration of the affairs of the county;

" \* \* \* \* \* ."

The General Assembly has thus seen fit to expressly authorize the retention of experts and consultants where the county is operating under an alternative form of county government with either an appointive or elective county executive. This would necessarily include management consultants so long as their service relates to "the administration of the affairs of the county".

In specific answer to your question, it is my opinion and you are so advised that a board of county commissioners has no general statutory authority to contract for the services of a management consultant in every area in which the board is directed by statute to act. It may, however, do so to enable it to cooperate in a federally funded program. And, when a county, pursuant to R.C. Chapter 302., is operating under an alternative form of government, R.C. 302.13 permits the board of county commissioners to authorize the county executive to employ experts and consultants in connection with the administration of the affairs of the county.