

OPINION NO. 92-061**Syllabus:**

A county board of mental retardation and developmental disabilities is not a "political subdivision" for purposes of R.C. 9.833 and, accordingly, is not authorized by R.C. 9.833 to participate in establishing and maintaining a joint self-insurance program to provide health care benefits.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion on the following question: Is a county board of mental retardation and developmental disabilities ("county MR/DD board") a "political subdivision" capable of joining with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits pursuant to R.C. 9.833? You have indicated that the question was raised by a county MR/DD board that seeks to provide quality health insurance to its numerous employees at a price that is reasonable to the employees and the county taxpayers.

Self-Insurance Programs for Health Care Benefits under R.C. 9.833

R.C. 9.833 authorizes political subdivisions that provide health care benefits for their officers or employees to establish self-insurance programs or to participate in joint self-insurance programs to provide health care benefits, subject to the provisions contained in the statute. R.C. 9.833(A) defines "political subdivision" to mean "a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state."

Organization and Powers of a County MR/DD Board

Pursuant to R.C. 5126.02, there is created in each county a county MR/DD board, consisting of five members appointed by the board of county commissioners and two members appointed by the probate judge. The county MR/DD board is responsible for the provision of facilities, programs, and services for persons with mental retardation or developmental disabilities. R.C. 5126.05. The county MR/DD board has extensive authority over its operations. It may adopt a budget, allow its own expenditures from the county treasury, authorize positions of employment, and establish compensation, including salary schedules and fringe benefits, for all board employees. R.C. 319.16; R.C. 5126.05(B)(9), (11); R.C. 5705.28; 1984 Op. Att'y Gen. No. 84-071, at 2-231 (qualified on other grounds by 1990 Op. Att'y Gen. No. 90-074) ("a county [MR/DD] board may, pursuant to its authority to employ, grant its employees not only sick leave, but also other fringe benefits in excess of statutory entitlements, to the extent that no statute constricts its authority to grant particular benefits"). The county MR/DD board has express authority to contract for employee benefits and to purchase insurance policies. R.C. 5126.05(B)(11), (G).

Notwithstanding the extensive nature of its powers, a county MR/DD board is an agency of the county, rather than an independent entity. *See, e.g., State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 462, 423 N.E.2d 105, 109 (1981) (a county MR/DD board is a "county board" for purposes of obtaining legal counsel from the county prosecutor under R.C. 309.09); 1984 Op. Att'y Gen. No. 84-054. Employees and officers of a county MR/DD board are in the county service. *See, e.g., R.C. 124.11(A)(19), .38(A); Ebert v. Stark County Board of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); Op. No. 84-071; 1981 Op. Att'y Gen. No. 81-015 (qualified on other grounds by 1990 Op. Att'y Gen. No. 90-074). A county MR/DD board has no independent taxing authority. *See* 1991

Op. Att'y Gen. No. 91-042; 1988 Op. Att'y Gen. No. 88-096. Rather, the board of county commissioners is required to levy taxes and make appropriations sufficient to enable the county MR/DD board to perform its functions and duties. R.C. 5126.05; R.C. 5705.01, .19(L), .222, .25, .28; *see also Jackson County Board of Mental Retardation and Developmental Disabilities v. Board of County Commissioners*, 49 Ohio St. 3d 63, 551 N.E.2d 133 (1990). A levy for the purposes of the county MR/DD board is submitted to the voters by the county commissioners, and the county commissioners must approve the expenditure of the proceeds by annual appropriations to the county MR/DD board. *See* R.C. 5705.19(L), .222; Op. No. 91-042. It has, further, been found that a county MR/DD board depends upon the board of county commissioners for the purchase of real estate, 1982 Op. Att'y Gen. No. 82-018, and that the county is responsible for the disposition of unneeded personal property of a county MR/DD board, Op. No. 84-054. It is thus, clear that a county MR/DD board cannot function completely independently, but exists as a unit within the county government. *See, e.g., Stark County Educators Ass'n for the Training of Retarded Persons v. State Employment Relations Bd.*, No. CA-7784 (Ct. App. Stark County Oct. 10, 1989) (finding that, although a county MR/DD board is a public employer for purposes of collective bargaining under R.C. Chapter 4117, the board of county commissioners is the "legislative body," for purposes of R.C. 4117.10, with the duty to approve the budget and levy the necessary taxes for the county MR/DD board); 1985 Op. Att'y Gen. No. 85-067, at 2-266 n. 6 ("[a] county board of mental retardation and developmental disabilities is...a body of the county, rather than a separate political subdivision, taxing district, or special district...").

Procurement of Health Insurance for Employees of a County MR/DD Board

R.C. 305.171 authorizes the board of county commissioners of any county to provide health care benefits for county officers and employees and their immediate dependents from the funds or budgets from which the officers or employees are compensated for services. Since, as discussed above, officers and employees of a county MR/DD board are county officers and employees, the county commissioners may use moneys budgeted to the county MR/DD board to provide health care benefits for persons employed by the county MR/DD board. Pursuant to its authority to establish fringe benefits for its employees, *see* R.C. 5126.05(B)(11), a county MR/DD board may provide health care benefits that exceed those which the county would otherwise provide. *See* R.C. 305.171; *see also* 1981 Op. Att'y Gen. No. 81-082; 1980 Op. Att'y Gen. No. 80-030; 1978 Op. Att'y Gen. No. 78-029. *See generally, e.g.,* Op. No. 84-071.

Determination of Whether a County MR/DD Board is a "Political Subdivision" Under R.C. 9.833

The term "political subdivision" is used in various contexts throughout the Revised Code and is given various definitions. It is possible for an entity to be a political subdivision for one purpose and not for another. *See, e.g.,* 1987 Op. Att'y Gen. No. 87-102; Op. No. 84-071; Op. No. 81-015. In general, a county MR/DD board has not been found to be a political subdivision. *See, e.g.,* 1988 Op. Att'y Gen. No. 88-069, at 2-350 (finding that, for purposes of R.C. 3307.01(B), the county is a political subdivision of the state that acts through the county MR/DD board); Op. No. 84-071, at 2-230 to -231 (finding that a county is a political subdivision for purposes of R.C. 124.39, and a county MR/DD board is not). *See generally* Op. No. 91-042.

The definition currently at issue is that appearing in R.C. 9.833(A), which expressly names a "county" as a political subdivision, but does not mention a county MR/DD board. Since a county MR/DD board is a unit within the county government, it is appropriate to conclude that the county is included as a "political subdivision" for purposes of R.C. 9.833, but that a county MR/DD board is not so included. This conclusion is supported by the fact that R.C. 305.171(E) expressly permits a board of

county commissioners to use an individual self-insurance program or a joint self-insurance program, as provided in R.C. 9.833, to provide the health care benefits that it is authorized by R.C. 305.171 to provide, while no corresponding provision grants a county MR/DD board such power.

When R.C. 9.833 is read *in pari materia* with R.C. 305.171, it is clear that the county – rather than a county MR/DD board or other board or agency within the government of a county – has been granted the authority to enter into a self-insurance program or joint self-insurance program to provide health care benefits. *See generally Warner v. Ohio Edison Co.*, 152 Ohio St. 303, 89 N.E.2d 463 (1949); 1991 Op. Att'y Gen. No. 91-044. R.C. 9.833 speaks of allocating the costs of self-insurance among the funds or accounts in the subdivision's treasury. R.C. 9.833(C)(2). A county MR/DD board does not have its own treasury. Rather, its funds are part of the county treasury. *See* R.C. 319.16; Op. No. 88-096; 1985 Op. Att'y Gen. No. 85-055; 1984 Op. Att'y Gen. No. 84-089. In addition, R.C. 9.833 authorizes a political subdivision included under its provisions to issue general or special obligation bonds and notes in anticipation of such bonds. Unless R.C. 9.833 is construed as extending bond issuance authority to a county MR/DD board, a county MR/DD board has no such authority; rather it is dependent upon the county for its funding. *See, e.g.*, R.C. 133.01; R.C. 5126.05. Thus, when county voters approve a levy for the support of the programs and services of a county board of mental retardation and developmental disabilities, the board of county commissioners, rather than the county MR/DD board, is the entity with authority to issue anticipation notes. R.C. 5705.222(B).

Other Bodies Corporate and Politic

In addition to the entities expressly named as political subdivisions, R.C. 9.833 includes as a political subdivision any "other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state." It might be argued that a county MR/DD board comes within this definition because it is an entity with responsibility for certain governmental activities in a geographic area smaller than the state. To come within the definition, a county MR/DD board must, however, be a "body corporate and politic." That term has not been given a precise definition. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-098, at 2-479 ("for purposes of R.C. 2744.01(F), a body politic and corporate is merely a public entity which has been assigned certain corporate powers"); Op. No. 87-102. In certain instances, an entity is designated by statute as a body corporate and politic. *See, e.g.*, R.C. 1711.13 and 1988 Op. Att'y Gen. No. 88-034 (county agricultural society). In other instances, an entity is found to constitute a body corporate and politic because it is a public entity vested with various corporate powers. *See, e.g.*, R.C. 5593.08 and Op. No. 88-098 (county bridge commission).

In order to constitute a body corporate and politic for purposes of R.C. 9.833, an entity must be an independent entity, rather than a unit of another political subdivision.¹ As discussed above, the county MR/DD board is a unit within the county government, rather than an independent entity, and the board of county commissioners has express authority to establish and maintain a self-insurance program or to participate in a joint self-insurance program to provide health care benefits pursuant to R.C. 9.833. *See* R.C. 305.171(E). The evident

¹ R.C. Chapter 2744, which governs political subdivision tort liability, contains a definition of "political subdivision" that is similar to the one set forth in R.C. 9.833, but that also expressly includes various named entities. R.C. 2744.01(F). Some of those entities are designated by statute as bodies corporate and politic and others are not; some are not entirely independent in their operations. *See* 1987 Op. Att'y Gen. No. 87-102, at 2-679 to -680. It appears that at least some of the entities expressly named in R.C.

intent of the General Assembly was to authorize the county, rather than units within the county government, to participate in self-insurance programs under R.C. 9.833. It follows that a county MR/DD board cannot be considered a body corporate and politic under R.C. 9.833, and, therefore, cannot itself constitute a political subdivision for purposes of R.C. 9.833. Thus, although a county MR/DD board is authorized to establish fringe benefits for its employees, such a board cannot provide health benefits for its employees through a self-insurance program or a joint-self insurance program except insofar as the board of county commissioners provides such a program for the benefit of county employees.

Conclusion

It is, therefore, my opinion, and you are advised, that a county board of mental retardation and developmental disabilities is not a "political subdivision" for purposes of R.C. 9.833 and, accordingly, is not authorized by R.C. 9.833 to participate in establishing and maintaining a joint self-insurance program to provide health care benefits.

2744.01(F) were so named precisely because they did not clearly fit within the general definition of "political subdivision" contained therein. *See* R.C. 2744.01(F). *See generally* 1990 Op. Att'y Gen. No. 90-060; 1988 Op. Att'y Gen. No. 88-098; Op. No. 87-102. In any event, whether a particular entity is a political subdivision for purposes of R.C. 2744.01(F) is not determinative of the question whether that entity is a political subdivision for purposes of R.C. 9.833.

Op. No. 87-102 concludes that a county public defender commission is a branch of county government, and that the commission does not itself constitute a distinct political subdivision for purposes of R.C. Chapter 2744. Op. No. 87-102, at 2-681 to -682. 1988 Op. Att'y Gen. No. 88-069 reaches a similar conclusion with respect to a county MR/DD board. Those conclusions are consistent with the analysis expressed in this opinion.