

March 20, 2018

The Honorable R. Kyle Witt
Fairfield County Prosecuting Attorney
239 West Main Street
Suite 101
Lancaster, Ohio 43130

SYLLABUS:

2018-007

1. For the purpose of R.C. 305.03(A)(1), the duties of the office of county commissioner are those actions or activities set forth expressly in a statute, or necessarily implied therein that are undertaken by a county commissioner to perform executive and administrative functions for the county.
2. Administration of an oath pursuant to R.C. 305.21, execution of a contract pursuant to R.C. 305.25, execution of a deed pursuant to R.C. 307.10, attendance at a meeting with the county administrator to discuss matters related to the administration of the county, and participation in a training required or suggested by the county's liability insurance carrier are duties of the office of county commissioner for the purpose of R.C. 305.03(A)(1).



MIKE DEWINE

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OPINION NO. 2018-007

The Honorable R. Kyle Witt
Fairfield County Prosecuting Attorney
239 West Main Street
Suite 101
Lancaster, Ohio 43130

Dear Prosecutor Witt:

You have requested an opinion whether the performance of certain actions or activities by a county commissioner constitutes the performance of the duties of the office of county commissioner for the purpose of R.C. 305.03(A)(1). You have asked about the following specific actions or activities:

1. A county commissioner's administration of an oath necessary in the discharge of the duties of a board of county commissioners pursuant to R.C. 305.21.
2. A county commissioner's execution of a contract pursuant to R.C. 305.25 when the majority of the board of county commissioners approved the contract and the individual commissioner was given authority to sign the contract on behalf of the board.
3. A county commissioner's execution of a deed pursuant to R.C. 307.09¹ for the transfer of real property that was approved by a majority of the board of county commissioners.
4. A county commissioner's attendance at a meeting with the county administrator to discuss the administration, enforcement, and execution of policies of the board of county commissioners, or other matters relating to the administration of the county.

¹ Your letter cites R.C. 309.10 with respect to your question about the execution of a deed for the transfer of real property by the board of county commissioners. We believe that citation was a typographical error and the intended statute was R.C. 307.09.

5. A county commissioner's participation in a training that the county's insurance carrier requires or suggests all county employees and elected officials attend for the purpose of mitigating the county's exposure to risk.

R.C. 305.03(A)(1) states, “[w]henver any county officer, except the county auditor or county treasurer, fails to perform the duties of office for ninety consecutive days, except in case of sickness or injury as provided in [R.C. 305.03(B) and (C)], the office shall be deemed vacant.” If a county officer is “absent because of sickness or injury, the officer shall cause to be filed with the board of county commissioners a physician’s certificate of the officer’s sickness or injury.” R.C. 305.03(B). If a county officer, other than a county auditor or county treasurer, fails to file a physician’s certificate within ten days after the expiration of ninety days, the office shall be deemed vacant. *Id.* If a county officer timely files a physician’s certificate, “but continues to be absent for an additional thirty days commencing immediately after the last day on which [the physician’s] certificate may be filed . . . , the office shall be deemed vacant.” R.C. 305.03(C).

The word “duties” is not defined in the Revised Code for the purpose of R.C. 305.03. Accordingly, the term should be given its ordinary meaning. *See* R.C. 1.42. *Black’s Law Dictionary* 616 (10th ed. 2014) defines “duty” as “[a]ny action, performance, task, or observance owed by a person in an official or fiduciary capacity.” Similarly, *Webster’s New World College Dictionary* 454 (5th ed. 2014) defines “duty” as “any action, task, etc. required by or relating to one’s occupation or position[.]” Those definitions indicate that the word “duties” in R.C. 305.03(A)(1) means those actions, tasks, or observances that are within a county officer’s authority to carry out the functions of the county office.

It is well settled that a board of county commissioners is a creature of statute. *State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraph 1); 2009 Op. Att’y Gen. No. 2009-040, at 2-296. As a creature of statute, a board of county commissioners and the individual members of that board have only those powers that are expressly set forth in a statute or that are implied as necessary in order to carry out an express power. *State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraph 2); *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917); 2009 Op. Att’y Gen. No. 2009-040, at 2-296. A board of county commissioners exercises its express and implied statutory powers in order to carry out the executive functions of the county. *See* 2005 Op. Att’y Gen. No. 2005-016, at 2-155 (“[a] board of county commissioners is responsible for governing the county, and is statutorily endowed with a myriad of powers and duties”); 2004 Op. Att’y Gen. No. 2004-051, at 2-439 (“[c]ounty commissioners are responsible for governing the county”); 1957 Op. Att’y Gen. No. 1476, p. 780, at 782 (“[t]he executive functions of a county are largely vested in the board of county commissioners”). The executive functions of the county involve the general government of the county and administration of its affairs. *See generally Webster’s New World College Dictionary* 508 (5th ed. 2014) (defining “executive” as “of, capable of, or concerned with carrying out duties, functions, etc. or managing affairs . . . empowered and required to administer...; administrative”); *Merriam-Webster’s Collegiate Dictionary* 436 (11th ed. 2005) (defining “executive” as “having administrative or managerial responsibility”).

The ordinary meaning of “duty” and the principles explained above governing the powers of a board of county commissioners lead us to conclude that, for the purpose of R.C. 305.03(A)(1), the duties of the office of county commissioner are those actions or activities set forth expressly in a statute, or necessarily implied therein that are undertaken by a county commissioner to perform executive and administrative functions for the county. Thus, any action or activity involving the exercise of express or implied statutory powers in furtherance of the administration and operation of the county is a duty of the office of county commissioner for the purpose of R.C. 305.03(A)(1).

We now consider whether the specific actions and activities mentioned in your letter constitute duties of the office of county commissioner for the purpose of R.C. 305.03(A)(1). The first action or activity described in your letter is a county commissioner’s administration of an oath necessary in the discharge of the duties of a board of county commissioners pursuant to R.C. 305.21. R.C. 305.21 states “[a]ny county commissioner may administer any oath necessary in the discharge of the duties of the board of county commissioners.” Insofar as the administration of an oath pursuant to R.C. 305.21 is an action or activity set forth expressly in a statute, which is undertaken by a county commissioner to perform executive and administrative functions for the county, it constitutes a duty of the office of county commissioner for the purpose of R.C. 305.03(A)(1).

You next ask whether a county commissioner’s execution of a contract pursuant to R.C. 305.25² when the majority of the board of county commissioners approved the contract and the individual commissioner was given authority to sign the contract on behalf of the board and whether a county commissioner’s execution of a deed pursuant to R.C. 307.09 for the transfer of real property that was approved by a majority of the board of county commissioners constitute duties of the office of county commissioner. There are several sections of the Revised Code that authorize a board of county commissioners to enter into contracts for a variety of purposes. *See, e.g.*, R.C. 305.171; R.C. 307.02; R.C. 307.05; R.C. 307.15; R.C. 307.63; R.C. 307.69. In addition, R.C. 307.09 authorizes a board of county commissioners to sell any real property belonging to the county that is not needed for public use, when the sale is in the interests of the county. Entering into a contract or executing a deed on behalf of the county for a purpose expressly or impliedly permitted by a statute involves the performance of executive or administrative functions of the county. Accordingly, both of those activities are duties of the office of county commissioner for the purpose of R.C. 305.03(A)(1).

The fourth action taken by a county commissioner, about which you inquire, is a county commissioner’s attendance at a meeting with the county administrator to discuss the administration, enforcement, and execution of policies of the board of county commissioners, or other matters relating to the administration of the county. A board of county commissioners may appoint a county administrator, “who shall be the administrative head of the county under the direction and supervision of the board and who shall hold office at the pleasure of the board.” R.C. 305.29. “[T]he [county]

² R.C. 305.25 states “[n]o contract entered into by the board of county commissioners ... shall be valid unless it has been assented to at a regular or special session of the board, and entered in the minutes of its proceedings by the county auditor or the clerk of the board.”

administrator is responsible for making policy recommendations to the board, implementing the board's programs, policies, and decisions, coordinating the work of county departments and the delivery of county services, and performing such other duties as are assigned by the board of county commissioners." 2005 Op. Att'y Gen. No. 2005-016, at 2-156; *see generally* R.C. 305.30 (powers and duties of a county administrator). In addition, a county administrator "has no independent power [but] derives all of his authority from, and in accordance with the limitations established by, the board of county commissioners." *Id.* at 2-156. The relationship between a board of county commissioners and a county administrator was further described as follows:

An administrator's duties are naturally incident to the performance of the board's own duties, and it is within the statutory authority of the board to assign the performance of the administrator's duties to one or more of the commissioners. Although a board of county commissioners is not required to employ an administrator, it remains directly responsible for ensuring that any necessary duties that could be assigned to an administrator are carried out.

Id. at 2-160 (footnote omitted). Therefore, insofar as a county administrator serves at the pleasure of, and under the direction of the board of county commissioners, and performs duties that are incident to the board's own duties, attendance at a meeting with the county administrator to discuss the administration, enforcement, and execution of policies of the board of county commissioners, or other matters relating to the administration of the county constitutes a duty of the office of county commissioner for the purpose of R.C. 305.03(A)(1).

Finally, you ask whether a county commissioner's participation in a training that the county's insurance carrier requires or suggests all county employees and elected officials attend for the purpose of mitigating the county's exposure to risk constitutes a duty of the office of county commissioner for the purpose of R.C. 305.03(A)(1). A board of county commissioners may be sued, and in certain circumstances, a county may be subject to civil tort liability for injury, death, or loss to person or property caused by an act or omission of the county or its employees. R.C. 305.12; R.C. 2744.02; R.C. 2744.03. To protect the county from loss incurred as a result of a finding of liability, a board of county commissioners is authorized to procure policies of insurance to insure against liability for damage or injury to persons or property caused by county officers and employees. *See, e.g.*, R.C. 9.83; R.C. 307.44; R.C. 307.441; R.C. 2744.08; R.C. 2744.081. Implicit in the express authority to procure a policy of insurance is the authority to comply with the requests or requirements of the insurance carrier to maintain that insurance coverage. Taking steps to mitigate or reduce the potential exposure of the county to civil liability for damage or injury to persons or property is part of a county commissioner's executive and administrative functions. Therefore, a county commissioner's participation in a training that the county's insurance carrier requires or suggests all county employees

and elected officials attend for the purpose of mitigating the county's exposure to risk constitutes a duty of the office of county commissioner for the purpose of R.C. 305.03(A)(1).³

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. For the purpose of R.C. 305.03(A)(1), the duties of the office of county commissioner are those actions or activities set forth expressly in a statute, or necessarily implied therein that are undertaken by a county commissioner to perform executive and administrative functions for the county.
2. Administration of an oath pursuant to R.C. 305.21, execution of a contract pursuant to R.C. 305.25, execution of a deed pursuant to R.C. 307.10, attendance at a meeting with the county administrator to discuss matters related to the administration of the county, and participation in a training required or suggested by the county's liability insurance carrier are duties of the office of county commissioner for the purpose of R.C. 305.03(A)(1).

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with the first name "Michael" being larger and more prominent than the last name "Dewine".

MICHAEL DEWINE
Ohio Attorney General

³ The particular actions or activities identified in your letter and addressed in this opinion are not all the duties of the office of county commissioner. The office of county commissioner involves many duties.

In addition, this opinion does not address the circumstances necessary to deem a county office vacant under R.C. 305.03(A)(1) and does not consider whether, under certain facts, a county commissioner's office is vacant under the statute. This opinion addresses only what constitutes a duty of the office of county commissioner for the purpose of R.C. 305.03(A)(1).