

**OPINION NO. 81-050****Syllabus:**

A county board of mental retardation and developmental disabilities is bound by the competitive bidding requirements of R.C. 307.86 when entering into contracts pursuant to R.C. 5126.05 where the dollar amount exceeds \$5,000.

**To: Richard L. Ross, Morgan County Pros. Atty., McConneville, Ohio**  
**By: William J. Brown, Attorney General, September 10, 1981**

I have before me your request for my opinion which poses the following question: does R.C. 307.86, which states that competitive bidding is necessary in awarding any contract for services where the dollar amount exceeds \$5,000, apply to contracts entered into by a county board of mental retardation and developmental disabilities pursuant to R.C. 5126.05 "to provide the facilities, programs, and services authorized or required, upon such terms as may be agreeable, and in accordance with Chapters 3323. and 5126. of the Revised Code and rules adopted thereunder"?

In order to answer this question, it is necessary to consider R.C. 307.86, which states:

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of five thousand dollars, except as otherwise provided in section 307.02, 307.861 [307.86.1], 3501.301 [3501.30.1], 3505.13, 4115.31 to 4115.35, 5543.19, 5713.01, or 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists and such determination and the reasons therefor are entered in the minutes of the proceedings of the board, when:

(1) The estimated cost is less than twenty thousand dollars; or

(2) There is actual physical disaster to structures. Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under this division because the estimated cost is less than twenty thousand dollars, but the estimated cost is ten thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority

shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited, for no less than one year after the contract is awarded.

(B) The purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county and the only source of supply for such supplies, part, or parts is limited to a single supplier;

(C) The purchase is from the federal government, state, another county or contracting authority thereof, a board of education, township, or municipal corporation;

(D) Public social services are purchased for provision by the county department of welfare under section 329.04 of the Revised Code;

(E) The purchase consists of human and social services by the board of county commissioners from nonprofit corporations or associations under programs which are funded entirely by the federal government. (Emphasis added.)

The question thus becomes whether a county board of mental retardation and developmental disabilities is a contracting authority, as defined in R.C. 307.92 for purposes of R.C. 307.86.<sup>1</sup> This question was answered affirmatively by the Court of Common Pleas of Butler County.

In C B Transportation, Inc. v. Butler County Board of Mental Retardation, 60 Ohio Misc. 71, 397 N.E.2d 781 (C.P. Butler County 1979), an issue faced by the court was whether the board of county commissioners or the board of mental retardation<sup>2</sup> had the authority to contract for the services which then R.C. 5126.03<sup>3</sup> mandated county boards of mental retardation provide. The court concluded that, while the board of county commissioners had the authority to tax on behalf of the county board of mental retardation, it had no power to exercise any control over that board. The court further noted that, as a statutory body, the board of county commissioners had only those powers specifically granted or necessarily implied by statute. The court found that the board of county commissioners lacked the necessary statutory authority to enter into such contracts. As R.C. 5126.03 (now R.C. 5126.05) required someone to enter into contracts enabling the county board of mental retardation to provide specified services, and the county commissioners lacked such authority, the court concluded that R.C. 5126.03 (now R.C. 5126.05) necessarily implied that the board of mental retardation had the power to enter into contracts to provide these mandated services.

The court went on to hold that, as a county board of mental retardation had the power to enter into contracts, it necessarily followed that it was a contracting authority within the meaning of R.C. 307.92. As a result of falling under R.C. 307.92, the county board of mental retardation was subject to the competitive bidding requirements of R.C. 307.86.

<sup>1</sup>As used in sections 307.86 to 307.91, inclusive, of the Revised Code, 'contracting authority' means any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof." R.C. 307.92.

<sup>2</sup>Am. Sub. S.B. 160, 113th Gen. A. (1980) (eff. Oct. 31, 1980) amended R.C. 5126.02, changing the name "county board of mental retardation" to "county board of mental retardation and developmental disabilities."

<sup>3</sup>Am. Sub. S.B. 160, 113th Gen. A. (1980) (eff. Oct. 31, 1980) changed the section number of the provision of Chapter 5126 which defines the powers of the board from R.C. 5126.03 to R.C. 5126.05, and slightly amended the substantive content of the section.

Since the decision in C B Transportation, R.C. 5126.03 has been amended and replaced by R.C. 5126.05. However, the new statute contains essentially the same language as former R.C. 5126.03 regarding county boards of mental retardation's authority to enter any necessary contracts. It states: "Any county board may enter into contracts with other such boards and with public or private, nonprofit or profit making agencies or organizations of the same or another county, to provide the facilities, programs, and services authorized or required. . . ." R.C. 5126.05.

Applying the same reasoning to R.C. 5126.05 as the court in C B Transportation applied to its predecessor, former R.C. 5126.03, one arrives at the same conclusion. A county board of mental retardation and developmental disabilities is a contracting authority within the meaning of R.C. 307.92. As such, it is bound by the competitive bidding requirements of R.C. 307.36.

I note that your question concerns a contract between a county board of mental retardation and a nonprofit organization. While R.C. 307.86(E) does contain an exception to the competitive bidding requirements where a board of county commissioners purchases human and social services from a nonprofit corporation with exclusively federal moneys, there are no exceptions in the statute which could apply to a county board of mental retardation and developmental disabilities contracting for the services in question.

It is, therefore, my opinion, and you are so advised, that a county board of mental retardation and developmental disabilities is bound by the competitive bidding requirements of R.C. 307.86 when entering into contracts pursuant to R.C. 5126.05 where the dollar amount exceeds \$5,000.