

**OPINION NO. 83-027****Syllabus:**

1. Where a resolution adopted by a board of county commissioners under R.C. 322.02 directs the county auditor to collect a real property transfer tax, the county auditor must collect such tax, absent direction to the contrary by resolution of the county commissioners or order of a court, even if the resolution provides for annual review of the tax and such review has not been undertaken.
2. R.C. 5713.09 and 5713.10 do not authorize the county commissioners or county engineer to contract with a private firm for the provision of tax mapping services.

3. Pursuant to R.C. 325.17, the county engineer may contract for the services of fiscal and management consultants to aid him in the execution of his powers and duties as county engineer; he may not contract under that section for services to aid him in the execution of his powers and duties as county tax map draftsman.
4. As provided in R.C. 9.35, and subject to any limitations imposed under R.C. 307.84, the county engineer may, pursuant to a resolution duly adopted by the board of county commissioners, contract with a person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services for the performance of mechanical, clerical, or record-keeping services necessary in the performance of his duties.
5. Pursuant to R.C. 305.15, when the services of an engineer are required and the amount of work to be performed makes it necessary, the county commissioners may, upon written request of the county engineer, enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state for the performance of such services.

**To: Gregory W. Happ, Medina County Prosecuting Attorney, Medina, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 25, 1983**

I have before me your request for an opinion on two questions concerning a real property transfer tax and the uses to which it may be applied. Your first question concerns Resolution No. 79-353, passed by the Medina Board of County Commissioners in 1979. The Resolution states, in relevant part:

WHEREAS, Under Ohio Revised Code Section 322.02 a permissive real property transfer tax may be levied by the Board of County Commissioners, and

WHEREAS, The required publications and public hearings have been held by the Board of County Commissioners, Medina County, Ohio.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, Medina County, Ohio, that a portion of the allowable permissive real property transfer tax under Section 322.02 of the Ohio Revised Code be levied and [administered] under the following [measures].

Section 1 Effective Date

The permissive real property transfer tax shall become effective as of September 1, 1979, at which time the Medina County Auditor shall begin the collection of said tax.

. . . .

Section 3 Special Fund

The Medina County Auditor shall establish a special fund [through which] all proceeds from said tax shall be administered. . . .

Section 4 Annual Review

During a regular meeting of the Board of Medina County Commissioners in the month of November of

each year the tax is being collected the Board of Commissioners shall review the status of said tax and modernization program. Notice of said review meeting shall be made by publication in a newspaper of general circulation in the county giving the date, time, and place of said review at least two weeks before the meeting is held.

#### Section 5 Project To Be Funded

All proceeds from said tax shall be used for the modernization of the property transfer system. The following six major projects are needed to accomplish the modernization progress and shall be funded.

- a. Full serial and topographic mapping of the county.
- b. Redrafting of all tax maps.
- c. Permanent Parcel number system.
- d. Restoration and/or lamination of old property records.
- e. Improve current microfilm system.
- f. Restoration and monumentation of survey control corners.

#### Section 6 Duration of Tax

It is the intent of the Board of Commissioners, Medina County, Ohio, that on the completion of these six major projects. .the said tax shall be terminated. The current estimate of time for the completion of said project is ten years. However, if during the annual review it is found that less or more time is needed said time table shall be adjusted and the duration of the tax adjusted likewise.

You have indicated that there may be a question as to whether the county commissioners carried out the annual review of the tax as provided in Section 4 of the Resolution. In light of such situation, you have asked:

If the enabling Resolution of the Board of County Commissioners for levying of the permissive real property transfer tax pursuant to O.R.C. Section 332.02, places certain annual review requirements within the Resolution, does failure to abide by the Resolution void the levying of the tax under authority of that Resolution?

The Resolution in question was adopted pursuant to R.C. 322.02, which authorizes a county to levy and collect a real property transfer tax, at a rate not to exceed thirty cents per hundred dollars, on deeds conveying real property, or interests therein, within the county. R.C. 322.02 provides that the tax "shall be levied pursuant to a resolution adopted by the board of county commissioners," and requires that two public hearings be held prior to its adoption. The tax is to be levied upon the grantor named in the deed and "paid by the grantor for the use of the county to the county auditor at the time of the delivery of the deed as provided in [R.C. 319.202] and prior to the presentation of the deed to the recorder of the county for recording." R.C. 322.02 also contains provisions governing the adoption of such a tax as an emergency measure.

R.C. 322.02 provides that a resolution levying a real property transfer tax is subject to a referendum, see R.C. 305.31-41, unless it is adopted as an emergency measure. R.C. 322.02 states further: "A resolution may direct the board of

elections to submit the question of levying the tax to the electors of the county at the next primary or general election in the county occurring not less than seventy-five days after such resolution is certified to the board." R.C. 322.021 authorizes electors to initiate the question of a repeal of a county permissive tax adopted as an emergency measure under R.C. 322.02.

The relevant statutes thus provide means for involvement of the public in adoption of a real property transfer tax, both by requiring public meetings prior to the levying of the tax and by authorizing procedures by which the electorate may vote upon the tax. The statutory scheme does not require the county commissioners to publish notice of a meeting at which they will provide an annual review of the tax, as is prescribed by Section 4 of the Resolution in question.

Your question is whether the levying of the tax would be made void, if the county commissioners failed to comply with Section 4 of the Resolution.<sup>1</sup> The applicable statutes provide no guidance on this question, for they do not seem to contemplate that such a provision might be part of a resolution adopting the tax.

The word "void" carries with it the connotation that the matter to which it applies is a nullity, of no effect whatsoever. In contrast, the word "voidable" applies to matters which are subject to challenge and may be struck down through appropriate legal proceedings. See Terrill v. Auchauer, 14 Ohio St. 80 (1862). Whether the Resolution might be struck down by a court in appropriate legal proceedings is a matter upon which I will not speculate.<sup>2</sup> I consider the question, instead, in terms of your duty to advise the officers of your county. I turn, specifically, to the question whether, assuming that the review provisions of

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<sup>1</sup> I note that a determination as to whether the review provisions of Section 4 of the Resolution were satisfied would require findings of fact. I am not making a determination on that question.

<sup>2</sup> Your letter mentions the possibility that a failure to provide an annual review pursuant to Section 4 of the Resolution might create a procedural error on behalf of the county commissioners correctable by mandamus. As a general rule, a writ of mandamus will issue only if relators show: (1) that they have a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform; and (3) that there is no plain and adequate remedy in the ordinary course of the law. See State ex rel. Daoust v. Smith, 52 Ohio St. 2d 199, 371 N.E.2d 536 (1977). See R.C. 2731.01 ("[m]andamus is a writ. . .commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station"); R.C. 2731.05. Whether mandamus will lie in a particular situation is a question which must, ultimately, be decided by the courts. See State ex rel. Pressley v. Industrial Commission, 11 Ohio St. 2d 141, 228 N.E.2d 631 (1967). See generally R.C. Chapter 2731; 1937 Op. Att'y Gen. No. 1212, vol. III, p. 2092. As a member of the executive branch of government, I can neither direct the judiciary to take particular action nor predict what action a court might take. See generally 1972 Op. Att'y Gen. No. 72-097.

My authority as Attorney General to provide legal advice to county prosecutors does not encompass matters involving the exercise of discretion, but extends under R.C. 109.14 only to matters "respecting [the prosecutors'] duties in all complaints, suits, and controversies in which the state is, or may be a party." The Ohio Supreme Court has held that a county prosecutor may bring an action in mandamus concerning alleged violations of law in his county. See State ex rel. Downing v. Powers, 125 Ohio St. 108, 110, 180 N.E. 647, 648 (1932) ("[i]f the suit might have been brought by any taxpayer, it might also be brought by the prosecuting attorney"). I am, however, aware of no provision of law which would impose upon you a duty to bring such an action in the instant case. Compare R.C. 733.58 ("[i]n case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty"). See generally 1963 Op. Att'y Gen. No. 18, p. 94.

Section 4 were not satisfied, you have a duty to advise county officers that no taxes may be collected under the Resolution in question.

R.C. 322.02 provides that, after a tax is levied pursuant to the provisions of that section, it is to be paid by the grantor to the county auditor at the time of delivery of the deed and prior to presentation of the deed to the county recorder. Thus, it is the county auditor who is responsible for collecting the real property transfer tax. The auditor's duties are, therefore, the subject of your question.

Since the office of county auditor is created by statute, the auditor may exercise only such powers as are expressly delegated by statute or as may be implied as necessary to carry out the powers expressly delegated. State ex rel. Kuntz v. Zangerle, 130 Ohio St. 84, 197 N.E. 112 (1935). "The auditor of a county is a ministerial officer, except in such special cases as the legislature may clothe him with discretionary powers." Commissioners of Putnam County v. Auditor, 1 Ohio St. 322, 326 (1853); see, e.g., State ex rel. Greenward Realty Co. v. Zangerle, 135 Ohio St. 533, 21 N.E.2d 662 (1939) (the county auditor exercises some measure of discretion in placing omitted taxable personal property on the duplicate and determining its value). While the auditor has a duty to exercise his intelligence in carrying out his duties, he has no authority to act except as directed by law or by those having lawful authority to issue directions. See State ex rel. Commissioners of Marion County v. Allen, 86 Ohio St. 244, 99 N.E. 312 (1912); 1960 Op. Att'y Gen. No. 1244, p. 224.

The county auditor is required under R.C. 319.20 to process deeds presented to him and to endorse either that he has transferred the property on the tax list or that the property is not entered for taxation. My predecessors have concluded that such duty is mandatory, and that the county auditor has no power to pass upon the validity of deeds, except that he may refuse to process a deed if the description in the instrument is not sufficient to identify the property conveyed. 1980 Op. Att'y Gen. No. 80-029; 1969 Op. Att'y Gen. No. 69-139; see State ex rel. Ballard v. McKelvey, 20 Ohio Op. 2d 465, 89 Ohio L. Abs. 407, 184 N.E.2d 124 (C.P. Monroe County 1961), aff'd, 89 Ohio L. Abs. 415, 186 N.E.2d 144 (Ct. App. Monroe County 1961).

R.C. 319.20 requires that there be compliance with R.C. 319.202 before the county auditor may endorse a conveyance under R.C. 319.20. R.C. 319.202 requires the grantee to submit a statement declaring the value of the real property conveyed or stating that the conveyance is exempt under R.C. 319.54(F)(3) and provides that, unless the transfer is exempt under R.C. 319.54(F)(3), the grantor shall pay the real property transfer fee required by R.C. 319.54(F)(3) and the amount of real property transfer tax due, if such a tax has been levied under R.C. Chapter 322. R.C. 319.54(F)(3) provides that the county auditor shall charge and receive fees for administering R.C. 319.202, with the exception that no fee shall be charged on certain types of transfers listed in that subdivision. Pursuant to R.C. 322.02, a real estate transfer tax may be levied only upon deeds as defined in R.C. 322.01(B). R.C. 322.01(B) exempts from the definition of deeds all deeds which are exempt from the real property transfer fee under R.C. 319.54(F)(3.) Thus, deeds which are exempt from the real property transfer fee under R.C. 319.54(F)(3) are not subject to a real property transfer tax.

My predecessors have concluded that, in carrying out his duties under R.C. 319.202, which include the collection of applicable real property transfer fees and taxes, the county auditor has inherent authority to inquire into the facts and circumstances surrounding a transfer or conveyance claimed to be exempt under R.C. 319.54(F)(3) to determine whether the right to an exemption has been affirmatively established. 1970 Op. Att'y Gen. No. 70-124; 1970 Op. Att'y Gen. No. 70-033; 1968 Op. Att'y Gen. No. 68-165. See also 1981 Op. Att'y Gen. No. 81-016 at 2-62 ("the language of the exemption must be strictly construed in favor of imposition of the tax and against the exemption"). Thus, in administering the collection of the real property transfer tax, the county auditor may inquire into the facts to determine whether a particular transfer is exempt under R.C. 319.54(F)(3).

It does not, however, follow that the county auditor has inherent authority to determine whether the real property transfer tax should be levied at all. Both R.C.

319.202 and R.C. 322.02 provide that the grantor shall pay to the county auditor the amount required by any real property transfer tax levied by the county commissioners. Unless the transfer is not subject to the tax under R.C. 322.01 and 319.54(F)(3), the tax shall be paid; while the auditor may determine whether a particular transfer is exempt under R.C. 319.54(F)(3), he has no discretion to make determinations concerning the validity of the tax.

The terms of the Resolution direct the Medina County Auditor to begin the collection of the tax on a specified date and do not provide for him to stop collection until the tax is terminated. I find no basis for the auditor to simply cease collecting the tax, absent direction to that effect by resolution of the county commissioners or order of a court.<sup>3</sup> See State ex rel. Hoel v. Goubeaux, 110 Ohio St. 287, 144 N.E. 251 (1924) (county auditor must issue voucher for bill allowed by commissioners, though he disagrees with its allowance); 1969 Op. Att'y Gen. No. 69-108. See generally Wholesale Electric & Supply, Inc. v. Robusky, 22 Ohio St. 2d 181, 258 N.E.2d 432 (1970) (sheriff is immune from liability when he obeys writ which is apparently valid and enforceable); Loomis v. Spencer, 1 Ohio St. 153 (1853) (treasurer is protected from liability if he acts pursuant to duplicate which is regular on its face).

The county auditor's duty to collect real estate transfer taxes pursuant to R.C. 322.02 and a resolution of the county commissioners is, in my opinion, a ministerial task which allows for no exercise of discretion. See generally State ex rel. Donahey v. Roose, 90 Ohio St. 345, 107 N.E. 760 (1914) (placing of levy on tax duplicate is ministerial duty of county auditor and he has no discretion in its discharge). Assuming that a resolution passed by the county commissioners instituting the collection of such a tax appears valid on its face, the auditor has no duty to continually reexamine the resolution to attempt to determine whether circumstances outside the resolution itself may have rendered it subject to challenge. See generally Musser v. Adair, 55 Ohio St. 466, 45 N.E. 903 (1896) (the county auditor, as a ministerial officer, must exercise his best judgment in the performance of his duties, but does not have judicial power).

I conclude, therefore, that, where a resolution adopted by a board of county commissioners under R.C. 322.02 directs the county auditor to collect a real property transfer tax, the county auditor must collect such tax, unless he receives directions to the contrary by resolution of the county commissioners or by order of a court, even if the resolution contains annual review requirements which have not been satisfied.

Your second question concerns the uses to which the proceeds of the real property transfer tax may be directed. Section 5 of the Resolution indicates a number of items pertaining to the modernization of the property transfer system which are to be funded by the tax. Your question concerns the authority of the board of county commissioners or the county engineer to contract for the performance by private companies of the various functions involved in that modernization. You have stated your question as follows:

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<sup>3</sup> I am aware of Kloeb v. Mercer County Commissioners, 16 Ohio Dec. 152 (Cir. Ct. Mercer County 1903), which concerned a county auditor who acted in good faith in refusing to draw a warrant on the order of the county commissioners on the basis that the charges made for advertising were too high. The auditor was taken to court and incurred legal expenses in providing his defense, and the court held that he was entitled to be reimbursed for those expenses. The Kloeb case illustrates that a county auditor may, at any time, refuse to carry out a ministerial duty and accept the consequences of his refusal. Such an action might provide a method for having the validity of a particular action reviewed by the courts. See generally note 2, *supra*. I cannot, however, advise that such action be taken, since I cannot predict how a court will assess the auditor's duties under the law. See generally State ex rel. Manix v. Auditor, 43 Ohio St. 311, 321, 1 N.E. 209, 215 (1885) ("If [the] duty [of a public officer] is clear, its performance will not be excused by his doubts concerning it, however strong or honest they may be").

[Do R.C.] 305.15, 315.14, 5713.09 and 5713.10 prohibit either the Board of County Commissioners or the County Engineer from contracting with a "for profit" corporation to perform the necessary work falling within those sections?

Your question focuses on the distinction between having employees carry out particular functions under the supervision of the county engineer, and having such functions delegated to a private firm for performance. See, e.g., 1963 Op. Att'y Gen. No. 83, p. 150 (distinguishing between employee relationships and independent contractor relationships).

The positions of county commissioner and county engineer<sup>4</sup> are established by statute, R.C. 305.01, 315.01, and such officials have only such powers as are expressly granted by statute or as may be implied from the statutory grants of power. State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916); 1979 Op. Att'y Gen. No. 79-026; 1975 Op. Att'y Gen. No. 75-070. Thus, unless there is statutory authority permitting the county commissioners or engineer to contract with private firms for the performance of particular functions, the commissioners and engineer may not do so. See, e.g., Gorman v. Heuck, 41 Ohio App. 453, 180 N.E. 67 (Hamilton County 1931) (although county official may lack technical knowledge necessary to efficiently administer his office, he may not use public funds to secure outside expert advice unless such an expenditure is explicitly or impliedly authorized); 1977 Op. Att'y Gen. No. 77-098; 1974 Op. Att'y Gen. No. 74-065; 1917 Op. Att'y Gen. No. 373, vol. II, p. 1011. That the power to contract for services is not inherent in the power to appoint and employ is evidenced by the fact that the legislature has adopted provisions expressly authorizing the county commissioners to contract with outside experts for certain purposes. See, e.g., R.C. 9.36 (county commissioners may contract with fiscal and management consultants); R.C. 307.13 (county commissioners may contract for the services of an electrical safety inspector); Op. No. 74-065.

The authority of the county engineer to obtain services from a private firm by contract depends, in part, upon the particular duties to which the services are related. A county engineer's duties are set forth generally in R.C. Chapter 315. R.C. 315.08 states, in part:

The county engineer shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or registered surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county. . . .

R.C. 315.13 provides that the county engineer shall make emergency repairs on roads, bridges, and culverts in the county. R.C. 315.14 makes the county engineer responsible for inspecting public improvements, making surveys, and keeping records of estimates, bids, and contracts for improvements. R.C. 315.25, 315.26, 315.27, 315.31, and 315.35 require that the county engineer keep records of surveys, maps, plats, and related documents and also that he provide indexes to his records.

The county engineer's duties as county tax map draftsman are established by provisions separate from those appearing in R.C. Chapter 315. R.C. 325.14 states: "The engineer shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position." R.C. 5713.09 states:

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<sup>4</sup> Prior to the adoption of G.C. 2782-1, 1935 Ohio Laws 283, the county engineer was known as the "county surveyor."

The board of county commissioners may designate the county engineer<sup>5</sup> to provide for making, correcting, and keeping up to date a complete set of tax maps of the county, and shall employ the necessary number of assistants. Such maps shall show all original lots and parcels of land, and all divisions, subdivisions, and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision, or lot, all new divisions, subdivisions, or allotments made in the county, all transfers of property, showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer so that such maps shall furnish the county auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the county board of revision and the auditor, and shall be kept in the office of the auditor. (Footnote added.)

R.C. 5713.10 authorizes the county engineer to appoint the necessary draftsmen and fix their salaries, subject to the approval of the board of county commissioners.

R.C. 5713.09 and 5713.10 clearly authorize the county engineer and commissioners to hire people to assist with the preparation of tax maps under R.C. 5713.09. They do not, however, authorize the county engineer or commissioners to contract with private companies for the provision of such services.

R.C. 325.17 provides generally for county officers, including the county engineer, to appoint and employ assistants and other employees. See R.C. 325.27. It also authorizes such officers to "contract for the services of fiscal and management consultants to aid them in the execution of their powers and duties." The language of R.C. 325.17 (formerly G.C. 2981) has, however, been interpreted as being inapplicable to the hiring of individuals to assist in the preparation of county tax maps. 1945 Op. Att'y Gen. No. 181, p. 152; 1917 Op. Att'y Gen. No. 353, vol. I, p. 949.

In 1917 Op. No. 353, at 950, my predecessor stated:

From a careful study of this sentence ["The county surveyor shall be the county tax map draftsman. . . ."] it is evident that the legislature did not consider the duties of tax map draftsman to be performed by the county surveyor as county surveyor; but rather that the county surveyor, in addition to the position or office of county surveyor, should also hold the position of tax map draftsman. It does not say that the county surveyor shall do so and so in the way of preparing maps, but it says: "The county surveyor shall be tax map draftsman," that is, he virtually holds two positions.

Consequently, my predecessor concluded that, since the position of tax map draftsman is distinct from the position of county surveyor (now county engineer), the assistants to the tax map draftsman must be employed pursuant to R.C. 5713.09 and 5713.10, rather than pursuant to the engineer's general authority to employ set forth in R.C. 325.17.

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<sup>5</sup> The first sentence of R.C. 5713.09 suggests that the board of county commissioners may have some discretion in determining whether the county engineer must assume responsibility for tax mapping. The use of the word "shall" in R.C. 325.14 indicates, however, that it is mandatory that the county engineer assume those duties. See *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971). The enactment of R.C. 325.14 (formerly G.C. 7181) has been interpreted as repealing by implication that portion of R.C. 5713.09 (formerly G.C. 5551) which authorized the county commissioners to appoint the county engineer (formerly the county surveyor) as the tax map draftsman. 1945 Op. Att'y Gen. No. 181, p. 152; 1923 Op. Att'y Gen. No. 229, vol. I, p. 161.



I concur in the conclusion reached by my predecessor in 1917 Op. No. 353. Although both R.C. 5713.10 and R.C. 325.17 authorize the engineer to appoint assistants, R.C. 5713.10 specifically addresses the hiring of tax map assistants and requires that such appointments be approved by the county commissioners. Since R.C. 5713.10 specifically provides for the appointment of assistant tax map draftsmen, its provisions must be viewed as controlling over the more general provisions of R.C. 325.17. See 1945 Op. No. 181; 1919 Op. Att'y Gen. No. 690, vol. II, p. 1283; 1917 Op. Att'y Gen. No. 466, vol. II, p. 1264. See also R.C. 1.51 (when specific and general provisions conflict, the specific provision is deemed controlling).

Since R.C. 325.17 does not authorize the county engineer to employ tax map assistants, I am of the opinion that R.C. 325.17 does not authorize the engineer to contract with private companies to aid him in his duties as tax map draftsman. The authority of the county engineer to contract with consultants is granted as a part of the engineer's powers under R.C. 325.17, and, therefore, must be interpreted as relating only to the engineer's power to employ pursuant to R.C. 325.17. Compare R.C. 5713.10 with R.C. 5713.01 (authorizing the county auditor as tax assessor to "enter into a contract with an individual, partnership, firm, or corporation to do all or any part of the work").

I conclude, therefore, that R.C. 325.17 does not authorize the county engineer to contract for the services of fiscal and management consultants to aid him in the exercise of his duties as county tax map draftsman. I note, further, that, even as applied to duties of the county engineer as county engineer, the authority to contract under R.C. 325.17 extends only to the procurement of consultant services relating to fiscal and management matters, and does not encompass services of other varieties. See generally 1983 Op. Att'y Gen. No. 83-013 (discussing nature of consulting services); 1981 Op. Att'y Gen. No. 81-040; Op. No. 77-098. It does not appear that any of the tasks contemplated by Section 5 of the Resolution would require the procurement of consultant services relating to fiscal and management matters.

It is, therefore, my opinion that, pursuant to R.C. 325.17, the county engineer may contract for services of fiscal and management consultants to aid him in the execution of his powers and duties as county engineer. He may not contract under that section for assistance in the execution of his powers and duties as county tax map draftsman.

There is another section which may be relevant to the authority of the county engineer to contract for the services of a private firm. R.C. 9.35 authorizes certain public officials to contract with firms which are capable of rendering electronic data processing or computer services for the performance of mechanical, clerical, or record-keeping services. R.C. 9.35 states, in part:

(A) As used in this section, the term "public official" means an elected or appointed officer, employee, or agent of any political subdivision, board, commission, bureau, or other public body established by law who is permitted or required in the performance of his duties to issue checks, keep books and records, prepare and preserve payroll and other employee records, and make reports or perform other similar duties.

(B) Any public official may contract for and engage the services of a financial institution, or other person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform the mechanical, clerical, or record-keeping services necessary in the performance of his duties. Such services may include but are not limited to the preparation of payroll and other records, the preparation, signing, and issuance of checks, the preparation of reports and accounts, and the performance of all similar duties.

(C) A contract authorized by division (B) of this section may be entered into only:

(1) If the surety bond required by such public official includes

within its coverage any loss which might occur as the result of such contract;

(2) Pursuant to a resolution duly adopted by the governing board, commission, bureau, or other public body having jurisdiction over such public official authorizing a contract for the performance of such services;

(3) If the provisions of such contract do not conflict with the uniform system of accounting and reporting prescribed by the bureau of inspection and supervision of public offices;

(4) If assurances satisfactory to the bureau of inspection and supervision of public offices are furnished by both the financial institution, or other person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services, and the public official that the books and records of the public official in the possession of the person performing such services shall be subject to examination by the bureau of inspection and supervision of public offices to the same extent as if such services were being performed by the public official himself.

. . . .

(E) Nothing contained in this section relieves such public official from the primary responsibility for the maintenance of the records and performance of the duties of his office. (Emphasis added.)

R.C. 9.35 appears to be directed primarily toward records and operations of a financial nature. It is not, however, limited to them. The county engineer has numerous duties involving the preparation and keeping of records. See, e.g., R.C. 315.14, 315.25-.27, 315.31, 5713.09. Such duties come within the plain language of R.C. 9.35(A) ("required in the performance of his duties to. . .keep books and records") and R.C. 9.35(B) ("services may include but are not limited to the preparation of. . .records"). I conclude, therefore, that, for purposes of R.C. 9.35, the county engineer is a public official who may enter into contracts under R.C. 9.35(B). See 1970 Op. Att'y Gen. No. 70-091 (county auditor and county treasurer are public officials for purposes of R.C. 9.35 and may contract for ministerial services necessary for the preparation of county tax lists and duplicates, tax bills, and tax receipts).

It appears that a substantial portion of the project outlined in Section 5 of the Resolution is directed toward the restoration and updating of records for which the county engineer is responsible. It is, further, my understanding that aspects of the modernization project may involve the use of a computer and the use of data processing techniques. To the extent that the county engineer determines that a "person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services" will be able "to perform the mechanical, clerical, or record-keeping services necessary in the performance of his duties," including the preparation of records, the county engineer may contract with such person, firm, or corporation for the performance of such services under R.C. 9.35.

I note, however, that any contract entered into under R.C. 9.35 must comply with all provisions of that section. See, e.g., R.C. 9.35(C); Op. No. 70-091 (a contract authorized by R.C. 9.35 cannot extend beyond the contracting official's term of office). In particular, R.C. 9.35(C)(2) expressly requires "a resolution duly adopted by the governing board, commission, bureau, or other public body having jurisdiction over such public official authorizing a contract for the performance of such services." My predecessor concluded that, "[w]ith reference to contracts for the county auditor and county treasurer [under R.C. 9.35], the governing board is the board of county commissioners which is responsible for the appropriation, by resolution, of the funds necessary to pay for any contractual services authorized by [R.C. 9.35]." Op. No. 70-091 at 2-160. The same conclusion is applicable to the county engineer. See generally 1980 Op. Att'y Gen. No. 80-007.

I note, further, that R.C. 307.84 and related sections authorize the establishment of a county automatic data processing board. See R.C. 307.841-.846.

R.C. 307.84 provides that, after the initial meeting of such a board, "no county office shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board." Hence, in contracting for services under R.C. 9.35, the county engineer must act within any constraints that may be imposed pursuant to R.C. 307.84. See Op. No. 70-091. See generally Campanella v. Cuyahoga County, 57 Ohio Misc. 20, 387 N.E.2d 254 (C.P. Cuyahoga County 1977); 1977 Op. Att'y Gen. No. 77-030.

I conclude, therefore, that, as provided in R.C. 9.35, and subject to any limitations imposed under R.C. 307.84, the county engineer may, pursuant to a resolution adopted by the board of county commissioners, contract with a person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services for the performance of mechanical, clerical, or record-keeping services necessary in the performance of his duties. See also R.C. 9.35(E) ("nothing contained in this section relieves such public official from the primary responsibility for the maintenance of the records and performance of the duties of his office").

I am aware of no other statutory provision which would authorize a county engineer to contract with a private firm for the provision of services.

I turn now to the question of the authority of the county commissioners to contract for the performance of the functions about which you have inquired. On this point, R.C. 305.15 states:

When the services of an engineer are required with respect to roads, turnpikes, ditches, bridges, or any other matter, and when, on account of the amount of work to be performed, the board of county commissioners deems it necessary, upon the written request of the county engineer, the board may employ a registered professional engineer and as many assistant engineers, rodmen, and inspectors as are needed, and may also enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state for this purpose and fix the compensation therefor. In awarding such contracts the board shall not be required to comply with sections 153.40 and 5555.61 of the Revised Code. If no such contract is entered into, the board shall furnish suitable offices, necessary books, stationery, instruments, and implements for the proper performance of the duties imposed on the engineer, assistant engineers, rodmen, and inspectors by such board. (Emphasis added.)

Thus, when the services of an engineer are required and when the county engineer so requests in writing, the county commissioners may contract "with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state"<sup>6</sup> for the performance of such services. See, e.g., 1972 Op. Att'y Gen. No. 72-080; 1963 Op. No. 83; 1954 Op. Att'y Gen. No. 4615, p. 630.

The types of functions with which you are concerned are those set forth in Section 5 of the Resolution, including full aerial and topographic mapping of the county, redrafting of all tax maps, modernization of the permanent parcel number system, restoration and/or lamination of old property records, improvement of the microfilm system, and restoration and monumentation of survey control corners. Whether the services of an engineer are required for each of the particular functions involved must be determined on a case by case basis. See, e.g., R.C. 4733.01(B) and (D) (defining "practice of engineering" and "[p]ractice of surveying"); 1963 Op. No. 83 (contract for purchase of engineering drawings cannot properly be considered a contract for engineering services).

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<sup>6</sup> R.C. Chapter 4733 governs the registration of professional engineers. R.C. 4733.02 states, in part: "No person shall practice or offer to practice the professions of engineering or of surveying, or contract for such services, . . . unless such person has been registered or exempted under [R.C.] 4733.01 to 4733.23. . . ."

Certain provisions referenced in your letter involve activities which clearly may be performed only by engineers. For example, R.C. 307.31 concerns the survey of county boundary lines and R.C. 307.36 concerns the survey of corners of townships. The profession of surveying may, under R.C. 4733.02, be practiced only by one who is registered or exempted under R.C. Chapter 4733. It is not clear to what extent such activities are included in the modernization program outlined in Section 5 of the Resolution. If they are so included, however, I see no reason why they may not be performed by an engineering firm under contract pursuant to R.C. 305.15.

Your request suggests a concern that, because R.C. 307.31 and 307.36, respectively, state expressly that the board of county commissioners shall require the county engineer to "ascertain and survey such [county boundary] lines" or "ascertain, by actual survey and evidence, the corners of each or any of the originally surveyed townships in such county, and there place. . . a stone post," those activities may not be assigned, by contract, to a private firm. I do not find that to be the case. The clear intent behind the language of R.C. 305.15 which authorizes the county commissioners to employ or contract with engineers was to permit the commissioners to ensure that all necessary work assigned to the county engineer would be performed. See, e.g., R.C. 305.15 (authorizing such contracts "when, on account of the amount of work to be performed, the board of county commissioners deems it necessary"); 1917 Op. No. 373, at 1013 (G.C. 2411 [predecessor to R.C. 305.15] "indicates that it has reference to such work as the county surveyor [now county engineer] will ordinarily be compelled to do but is unable to perform because of the amount of work to be done"). Thus, where the amount of work is simply too great for the county engineer and his employees to perform, engineering duties may, pursuant to R.C. 305.15, be assigned by contract to persons, firms, partnerships, associations, or corporations qualified to perform engineering services.

I note, further, that the argument which prevents the application of R.C. 325.17 to the county engineer's duties as county tax map draftsman under R.C. 325.14 and 5713.09 is not applicable to R.C. 305.15. R.C. 305.15 states generally that it applies "[w]hen the services of an engineer are required with respect to roads, turnpikes, ditches, bridges, or any other matter" (emphasis added), thus clearly permitting the inclusion of tax mapping duties. Further, R.C. 305.15 authorizes the county commissioners, upon request of the county engineer, to contract for the performance of engineering services, and such a procedure complements the statutory provisions of R.C. 5715.09 and 5713.10, which provide that the county commissioners must approve the appointment of assistant tax map draftsmen named by the county engineer.

I conclude, therefore, that, pursuant to R.C. 305.15, when the services of an engineer are required and the amount of work to be performed makes it necessary, the county commissioners may, upon written request of the county engineer, enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state for the performance of such services.

To the extent that the services required to carry out functions of the modernization plan outlined in Section 5 of the Resolution are not services which may be performed only by engineers, the county commissioners may not contract for such services under R.C. 305.15. Rather, the county commissioners may obtain such services pursuant to contract with a private company only to the extent that they have authority so to contract under another statutory provision.

Your letter references R.C. 305.14, which permits the board of county commissioners, in certain circumstances, to employ legal counsel. It does not appear that such contracts will apply to any of the matters included under Section 5 of the Resolution.

R.C. 9.36 authorizes a board of county commissioners to "contract for the services of fiscal and management consultants to aid it in the execution of its powers and duties." As noted above in conjunction with the analogous language appearing in R.C. 325.17, it does not appear that the tasks contemplated by

Section 5 of the Resolution are of this nature. Further, the board may contract under R.C. 9.36 only for assistance in the execution of its own powers and duties, and not for assistance for another official, such as the county engineer. It is not clear that any of the functions to be performed under Section 5 of the Resolution pertain to the powers and duties of the board of county commissioners. The board is required by R.C. 5713.09 to employ the necessary number of tax map draftsmen, but it has neither the duty to prepare tax maps nor the direct responsibility for the operation of the property transfer system. Thus, it does not appear that the county commissioners' authority to contract for consultant services under R.C. 9.36 will be relevant to the performance of the projects listed in Section 5 of the Resolution.

To the extent that duties of the county commissioners are involved, the commissioners may contract for electronic data processing or computer services under R.C. 9.35. Based on the nature of the functions outlined in Section 5 of the Resolution, however, it appears that the county commissioners' actions under R.C. 9.35 will be limited to adoption of resolutions authorizing contracts of the county engineer under R.C. 9.35(C)(2), as discussed above.

I am aware of no other provision of statute which would permit the county commissioners to contract for the services about which you have inquired.

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

1. Where a resolution adopted by a board of county commissioners under R.C. 322.02 directs the county auditor to collect a real property transfer tax, the county auditor must collect such tax, absent direction to the contrary by resolution of the county commissioners or order of a court, even if the resolution provides for annual review of the tax and such review has not been undertaken.
2. R.C. 5713.09 and 5713.10 do not authorize the county commissioners or county engineer to contract with a private firm for the provision of tax mapping services.
3. Pursuant to R.C. 325.17, the county engineer may contract for the services of fiscal and management consultants to aid him in the execution of his powers and duties as county engineer; he may not contract under that section for services to aid him in the execution of his powers and duties as county tax map draftsman.
4. As provided in R.C. 9.35, and subject to any limitations imposed under R.C. 307.84, the county engineer may, pursuant to a resolution duly adopted by the board of county commissioners, contract with a person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services for the performance of mechanical, clerical, or record-keeping services necessary in the performance of his duties.
5. Pursuant to R.C. 305.15, when the services of an engineer are required and the amount of work to be performed makes it necessary, the county commissioners may, upon written request of the county engineer, enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state for the performance of such services.