

June 5, 2015

The Honorable Victor V. Vigluicci
Portage County Prosecuting Attorney
241 South Chestnut Street
Ravenna, Ohio 44266

SYLLABUS:

2015-019

1. A board of county commissioners may not borrow moneys from a private, for-profit company to purchase recycling carts and automated recycling trucks for a county solid waste management district.
2. Pursuant to R.C. 343.01(C), a board of county commissioners may lease recycling carts and automated recycling trucks for a county solid waste management district from a private, for-profit company.
3. Pursuant to a board of county commissioners' authority to equip county offices under R.C. 307.01-.02, a board of county commissioners of a county solid waste management district that deems it necessary to the proper and convenient conduct of the district may acquire recycling carts or automated recycling trucks by any of the means provided in R.C. 307.02, including a purchase by installment, a lease-purchase agreement, or a lease with an option to purchase.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2015-019

The Honorable Victor V. Vigluicci
Portage County Prosecuting Attorney
241 South Chestnut Street
Ravenna, Ohio 44266

Dear Prosecutor Vigluicci:

You have requested an opinion regarding the authority of a board of county commissioners of a county solid waste management district to enter into an agreement with a private, for-profit company to acquire recycling carts¹ and automated recycling trucks to be used by the district. Your letter requesting an opinion inquires about a board of county commissioners' authority to enter into an agreement to borrow moneys from a private, for-profit company for the purpose of purchasing recycling carts and automated recycling trucks from a vendor. Through conversations with members of your office, we have learned that you would also like us to consider whether a board of county commissioners of a county solid waste management district may acquire recycling carts and automated recycling trucks from a private, for-profit company through a lease with an option to purchase.²

¹ It is our understanding that a "recycling cart" is a bin or container used to hold recyclable materials.

² Determining the lawfulness of an agreement or contract between two parties is beyond the scope of an Attorney General opinion. 2000 Op. Att'y Gen. No. 2000-019, at 2-116 n.2 ("[t]he formal opinions process cannot be used to determine the validity or effect of particular contractual provisions"). Accordingly, this opinion does not determine the validity of an agreement between the Portage County Solid Waste Management District and Closed Loop Fund, L.P. See 2004 Op. Att'y Gen. No. 2004-005, at 2-44 ("[a]lthough you have provided us with a copy of the proposed agreement, this opinion does not address the validity of particular terms of that agreement"). Rather, this opinion addresses a board of county commissioners' general authority to acquire equipment for use in a county solid waste management district by borrowing moneys or through a lease with an option to purchase.

Portage County Solid Waste Management District

The board of county commissioners for each county in the state is required to establish and maintain either a county solid waste management district, R.C. 343.01(A)(1), or a joint solid waste management district, R.C. 343.01(A)(2). The board of county commissioners serves as the management authority of a county solid waste management district. 1993 Op. Att’y Gen. No. 93-018, at 2-95. A joint solid waste management district is managed by a board of directors, which is composed of all of the boards of county commissioners of the counties forming the joint district. R.C. 343.01(B). The board of county commissioners of a county solid waste management district or the board of directors of a joint solid waste management district may elect to establish a regional solid waste management authority to manage a solid waste management district. R.C. 343.011(A). The members of the board of trustees of a regional solid waste management authority shall perform all of the duties that a board of county commissioners or a board of directors is required to perform for the district. R.C. 343.011(B). The Portage County Solid Waste Management District is a county solid waste management district established pursuant to R.C. 343.01(A)(1). Ohio E.P.A. & Resource Recycling Systems, *Solid Waste Management Plan 2015 Portage County Solid Waste Management District*, 10 (2015), http://www.co.portage.oh.us/solidwaste/pdfs/___PORTAGE_FINAL%202.10.2015.pdf. Thus, this opinion discusses the authority of a board of county commissioners to borrow moneys to purchase recycling carts and automated recycling trucks for a county solid waste management district.

Board of County Commissioners’ Authority to Borrow Moneys to Purchase Recycling Carts and Automated Recycling Trucks

When evaluating the extent of a board of county commissioners’ authority, we begin with the well-established principle that “a board of county commissioners is a creature of statute[.]” 2009 Op. Att’y Gen. No. 2009-040, at 2-296. As a creature of statute, the board has such powers as are expressly granted by statute and any implied powers as are necessary to carry out those express powers. 2004 Op. Att’y Gen. No. 2004-005, at 2-44. “Further, the authority of a board of county commissioners to act in financial transactions ‘must be clear and distinctly granted,’ and any doubt regarding such authority must be resolved against its exercise.” *Id.* (quoting *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916)); see also *State ex rel. Ampt v. Hamilton Cnty. (Comrs.)*, 14 Ohio Dec. 228, 233 (Sup. Ct. Cincinnati 1900) (“statutes giving power to public officers and boards to expend money, or, incur liability for the taxpayers to meet, are to be strictly construed”). Accordingly, a board of county commissioners of a county that has a county solid waste management district may borrow moneys for the purchase of recycling carts and automated recycling trucks from a private, for-profit company provided that the board has clear statutory authority to enter into such a loan transaction. See 2004 Op. Att’y Gen. No. 2004-005, at 2-44 (“a board of county commissioners may incur debt or provide county funds to a private corporation only if it has clear statutory authority to do so”).

“Each county ... solid waste management district established under [R.C. Chapter 343] shall prepare, adopt ..., and implement a solid waste management plan for the district.” R.C. 3734.54(A). The required components of a solid waste management plan are set forth in R.C. 3734.53(A) and (B).

Recycling may be part of a county's solid waste management plan. *See* R.C. 343.02 (“[a] board of county commissioners ... of a county ... solid waste management district may contract ... for the furnishing to the district ... of solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery services”); R.C. 3734.53(A)(2) (a solid waste management plan shall enumerate the recycling activities in the district). In order to implement a solid waste management plan, “[a] board of county commissioners of a county [solid waste management] district ... may acquire, by purchase or lease, construct, improve, enlarge, replace, maintain, and operate such solid waste collection systems ... and such solid waste facilities ... as are necessary for the protection of the public health.” R.C. 343.01(C).

The term “collection systems,” as it is used in R.C. 343.01(C), is not defined by the General Assembly. In the absence of a statutory definition, we look to a term's common meaning. *See* R.C. 1.42. The ordinary meaning of “collection” is “the act or process of collecting[.]” *Merriam-Webster's Collegiate Dictionary*, 243 (11th ed. 2005). To “collect” is “to bring together into one body or place ... to gather or exact from a number of persons or sources[.]” *Id.* The ordinary meaning of “system” is “a regularly interacting or interdependent group of items forming a unified whole[.]” *Id.* at 1269. Thus, “solid waste collection systems” are groups of items functioning in a unified process to gather solid waste in a single location. It is, therefore, evident that recycling carts and automated recycling trucks that are used to collect solid waste and to transport that waste to a recycling facility constitute components of a “solid waste collection system.”

Furthermore, for the purpose of R.C. Chapter 343, a “facility” includes a recycling facility. R.C. 343.01(L)(4)(a). Recycling carts and automated recycling trucks that are used to collect and transport solid waste to a recycling facility are essential to the operation of a recycling facility. Therefore, under R.C. 343.01(C), a board of county commissioners may purchase recycling carts and automated recycling trucks for a county solid waste management district that conducts recycling activities or operates recycling facilities.

Although R.C. 343.01(C) provides authority for a board of county commissioners to purchase recycling carts and automated recycling trucks as part of operating solid waste collection systems and recycling facilities, the authority to purchase does not necessarily imply the authority to borrow money or to incur a debt in order to make that purchase. *See* 2010 Op. Att'y Gen. No. 2010-024, at 2-174 (“[w]hile a board of county hospital trustees does have broad statutory authority to manage and operate a county hospital ..., this authority does not necessarily imply the authority to borrow money or incur debt”); 2006 Op. Att'y Gen. No. 2006-044, at 2-428 (“[o]pinions of this office have consistently concluded that, although a public body may have the general authority to acquire property, it may not acquire property through use of an installment purchase contract without clear statutory authority”); 1993 Op. Att'y Gen. No. 93-039, at 2-203 (“[t]he power to borrow money or to incur debt is not necessarily to be implied from the authority conferred upon a board of township trustees to expend funds for particular purposes”); *cf* 1980 Op. Att'y Gen. No. 80-042, at 2-176 and 2-178 (language in R.C. 343.01(A) authorizing a board of county commissioners to “acquire ... real property ... by appropriation or any other method,” also authorizes acquiring real property by

installment purchase, in light of R.C. 307.02 (quoting version of R.C. 343.01(A) then in effect)).³ The reluctance to infer authority on the part of a board of county commissioners to incur a debt when that authority has not been expressly granted is based, in part, upon state constitutional and statutory restrictions on the board's power to incur debt. *See* Ohio Const. art. XII, § 11 (“[n]o bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred ... unless ... provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity”);⁴ R.C. 133.04, R.C. 133.07 (county's net indebtedness); R.C. 5705.41(D)(1) (a county is prohibited from entering into a contract involving the expenditure of money unless the fiscal officer certifies “that the amount required to meet the obligation ... has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances”); 2006 Op. Att’y Gen. No. 2006-044, at 2-428 to 2-429.

When the General Assembly intends to provide authority to a public entity to borrow moneys from a private source, it has provided such authority expressly. *See* 2010 Op. Att’y Gen. No. 2010-024, at 2-174 to 2-175; *see, e.g.*, R.C. 152.08(A)(9) (Ohio Building Authority “may ... [b]orrow money... from ... any federal agency or other governmental or private source”); R.C. 154.06(G) (Ohio Public Facilities Commission “may ... [b]orrow money ... from ... any governmental agency or person”); R.C. 303.37(E) (in order to carry out the provisions of R.C. 303.26-.56, a board of county commissioners may “borrow money ... from any sources, public or private”); R.C. 306.04(C)(8) (“[a] county transit board ... may ... [b]orrow money ... from ... any federal, state, or other governmental or private source”). Had the General Assembly intended to authorize a board of county commissioners of a county solid waste management district to borrow moneys from a private company to acquire recycling carts and automated recycling trucks, it could have enacted language similar to that found in other provisions that expressly authorizes borrowing moneys from a private source. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915); 2010 Op. Att’y Gen. No. 2010-024, at 2-175; *see also Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (“[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”); *accord* 1997 Op. Att’y Gen. No. 97-051, at 2-320.

³ Substantially similar language is found in the current version of R.C. 343.01(C).

⁴ An installment purchase agreement may constitute “bonded indebtedness” for the purpose of Ohio Const. art. XII, § 11. *State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 73, 285 N.E.2d 362 (1972) (“[t]he city has bound itself by a formal agreement to make specific future payments of money. Such a written agreement, obligating the city unconditionally to make such future payments constitutes a ‘bond’ of the city, and thus creates a ‘bonded indebtedness’”).

Instead of expressly authorizing a board of county commissioners of a county solid waste management district to borrow moneys from a private source to purchase equipment, the General Assembly enacted R.C. 343.07(A), which provides, in pertinent part:

A board of county commissioners may issue bonds of the county under [R.C. Chapter 133] for the purpose of paying a part or the whole cost of the acquisition, construction, enlargement, modification, or repair of any improvement provided for in [R.C. Chapter 343] in connection with a county ... solid waste management district[.]

See 2006 Op. Att’y Gen. No. 2006-008, at 2-72 (“[t]he manner in which a board of county commissioners generally borrows money is through issuance of bonds or notes as authorized by statute”). R.C. 343.07(A) provides that “[t]he cost of the improvement shall include, without limitation, the cost of acquiring ... any trucks ... or equipment necessary for the proper operation of the improvement.” In light of R.C. 343.01(C), which authorizes a board of county commissioners to purchase or lease equipment for solid waste collection systems, and R.C. 343.07(A), which authorizes a board of county commissioners to issue bonds of the county to pay for the cost of equipment purchased to operate an improvement in a county solid waste management district, we conclude that the General Assembly did not intend to authorize a board of county commissioners of a county solid waste management district to borrow moneys from a private source for the purchase of recycling carts and automated recycling trucks. We are not aware of any other express or necessarily implied statutory authority for a board of county commissioners to borrow moneys from a private company for the purpose of purchasing recycling carts and automated recycling trucks for a county solid waste management district.⁵ Therefore, a board of county commissioners may not borrow moneys from a

⁵ In a county solid waste management district where a general facilities plan has been approved, “the board [of county commissioners] may acquire, construct, improve, enlarge, equip, maintain, and operate, and *may enter into agreements determined by the board to be necessary for the acquisition, construction, improvement, enlargement, equipment, maintenance, or operation of*, any solid waste facilities included in the general facilities plan.” R.C. 343.04 (emphasis added). As recycling facilities are solid waste facilities, the board of county commissioners may enter into agreements that the board determines are necessary to operate and equip any recycling facilities that are part of the general plan. R.C. 343.04. Thus, R.C. 343.04 may be an additional source of authority to purchase recycling carts and automated recycling trucks in a county solid waste management district that has approved a general facilities plan and that operates a recycling facility.

Even though R.C. 343.04 broadly authorizes a board of county commissioners to “enter into agreements determined by the board to be necessary[.]” we do not construe R.C. 343.04 as providing authority to enter into a loan agreement. As discussed above, when the General Assembly intends to authorize a public entity to borrow moneys from a private source, that authority is expressly granted. Moreover, it cannot be said that borrowing moneys from a private source is necessary for a board of county commissioners of a county solid waste management district to carry out its express powers. Consequently, the authority to borrow moneys may not be implied from the express authority to enter into agreements provided by R.C. 343.04. *See* 1997 Op. Att’y Gen. No. 97-051, at 2-318 (a power

private, for-profit company to purchase recycling carts and automated recycling trucks for a county solid waste management district.

Board of County Commissioners' Authority under R.C. 343.01(C) to Acquire Recycling Carts and Automated Recycling Trucks by a Lease with an Option to Purchase

We next consider whether a board of county commissioners of a county solid waste management district may acquire recycling carts and automated recycling trucks from a private, for-profit company through a lease with an option to purchase. To answer that question, it is helpful to have an understanding of the terms “lease,” “lease-purchase agreement,” and “lease with an option to purchase.” A “lease” is “[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration.” *Black’s Law Dictionary*, 1024-25 (10th ed. 2014). A “lease-purchase agreement” is defined as “[a] rent-to-own purchase plan under which the buyer takes possession of the goods with the first payment and takes ownership with the final payment; a lease of property (esp. equipment) by which ownership of the property is transferred to the lessee at the end of the lease term.” *Id.* at 1027. A lease-purchase agreement, where the rental payments are applied toward the purchase price so that the purchase price is nominal and does not reflect the fair market value of the property at the time of purchase, is treated as a purchase of property by installments rather than a true lease. *See* 2004 Op. Att’y Gen. No. 2004-012, at 2-91 (a lease-purchase agreement where lessee may purchase property for \$1 at the expiration of the lease term “is typically considered to be a method of financing the purchase of property, rather than a true lease”); 1965 Op. Att’y Gen. No. 65-30, at 2-73 (an agreement to rent musical instruments where title to the instruments vests in the renter after payment of five rental payments “is in essence an attempt to purchase instruments on an installment plan”).⁶ An installment purchase agreement creates a debt, whereas a lease constitutes a current expense. 2006 Op. Att’y Gen. No. 2006-044, at 2- 428 to 2-429; 2004 Op. Att’y Gen. No. 2004-012, at 2-92; *see State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 72-73, 285 N.E.2d 362 (1972); *State ex rel. Ross v. Donahey*, 93 Ohio St. 414, 113 N.E. 263 (1916) (syllabus, paragraph 2).

A “lease with an option to purchase” may be referred to as a “lease option,” which is defined as “[i]n a contract for rental property, a clause that gives the renter the right to buy the property at a fixed price, [usually] at or after a fixed time.” *Black’s Law Dictionary*, 1268 (10th ed. 2014); *see id.* (defining “option” as “[a] contract by which a property owner agrees with another party that the latter may buy the property at a fixed price within a specified time; the right or privilege to buy property at

may not be implied as reasonably necessary to carry out an express power when a statute provides other means to carry out the express power).

⁶ Although a lease-purchase is treated as a purchase by installment, rather than a true lease, an installment purchase is distinguishable from a lease-purchase in that in an installment purchase, “title passes immediately to the purchaser, who agrees to pay for the property in installments over a period of years.” 2004 Op. Att’y Gen. No. 2004-012, at 2-93 n.1.

the election of the purchaser”). A lease with an option to purchase may actually be an installment sale or a lease-purchase agreement depending upon the terms of the agreement. *See In re Fox*, 229 B.R. 160, 164 (Bankr. N.D. Ohio 1998) (“for purposes of the Bankruptcy Code, merely labeling an agreement a lease, is not necessarily dispositive that the transaction under consideration actually created a lease. Instead, this Court must look to the substance of the underlying transaction to determine whether the Parties’ agreement actually created a true lease, or instead resulted in an installment sales contract in which was contained a disguised security interest” (citations omitted)); 2004 Op. Att’y Gen. No. 2004-012, at 2-91 (an agreement giving the lessee an option to purchase a building and the underlying land for one dollar after the payment of 119 monthly rental payments of \$825 is a lease-purchase agreement, not a true lease); 1964 Op. Att’y Gen. No. 1522, at 2-422 (an agreement where part of the rental payments are credited toward the purchase price “is to be distinguished from a true lease with option to purchase agreement”).

A primary factor in determining whether a lease with an option to purchase constitutes a true lease is the amount of the purchase price to be paid when the option is exercised. *Compare Brown Motors Leasing v. Reucher*, 80 Ohio App. 3d 225, 229, 608 N.E.2d 1162 (Lucas County 1992) (“[g]enerally, if the lessee’s option price is approximately equal to the fair market value of the property, the lease is considered a ‘true lease’”), *with In re Fox*, 229 B.R. 160, 165 (Bankr. N.D. Ohio 1998) (that the lease agreement contained an option to purchase the equipment at a nominal price was a factor in concluding that the agreement was not a true lease), *and In re Vital Prods. Co.*, 210 B.R. 109, 112-113 (Bankr. N.D. Ohio 1997) (same as previous parenthetical); *see also* 2004 Op. Att’y Gen. No. 2004-012, at 2-92 (“[a] ‘true lease’ may also include an option to purchase, but rental payments are not credited in whole or part, towards the purchase price, and at the end of the lease term, the purchase price is not nominal in amount but reflects the current market value of the property”). With those principles in mind, we turn to your second question.

Pursuant to R.C. 343.01(C), “[a] board of county commissioners of a county [solid waste management] district ... may acquire, by purchase or lease ... such solid waste collection systems within [the district] ... as are necessary for the protection of the public health.” Applying the meaning of “solid waste collection systems” that we provided above, recycling carts and automated recycling trucks that function in a unified process to gather recyclable solid waste in a single location constitute solid waste collection systems for the purpose of R.C. 343.01(C). Accordingly, a board of county commissioners may acquire, by purchase or lease, recycling carts and automated recycling trucks for the county solid waste management district pursuant to R.C. 343.01(C).

Our analysis does not end there, however, as we must determine whether the authority provided in R.C. 343.01(C) to “acquire, by purchase or lease,” encompasses the authority to acquire recycling carts and automated recycling trucks by a lease with an option to purchase. In 2000 Op. Att’y Gen. No. 2000-019, at 2-116 to 2-118, the Attorney General addressed, *inter alia*, whether R.C. 5549.21, which “authorizes a board of township trustees to acquire equipment for road work purposes by purchase or lease[,]” also authorizes acquiring the equipment by a lease with an option to purchase. The Attorney General concluded that “[w]here no express authority to enter into a lease with option to purchase is granted, such authority cannot be found in a general grant of authority to purchase or lease.” 2000 Op. Att’y Gen. No. 2000-019, at 2-118. This conclusion was reached after noting that

“[w]here the General Assembly has intended that public entities be permitted to enter into leases with option to purchase, it has expressly so stated.” *Id.* at 2-117; *see, e.g.*, R.C. 306.35(J) (a regional transit authority “[m]ay ... acquire ... by purchase for cash or by installment payments, by lease-purchase agreement, by lease with option to purchase, ... and may ... lease ... real and personal property”); R.C. 307.02 (“[t]he board of county commissioners ... may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease ... county offices”); R.C. 511.23(B) (a board of park commissioners of a township park district “may lease ... or purchase suitable lands for cash, by purchase by installment payments with or without a mortgage, by lease or lease-purchase agreements, or by lease with option to purchase”); R.C. 3313.37(B)(1) (“[b]oards of education of city, local, and exempted village school districts may acquire land ... by purchase Lands purchased may be purchased for cash, by installment payments, with or without a mortgage, by entering into lease-purchase agreements, or by lease with an option to purchase”); R.C. 3345.11 (“[e]ach state university or college may acquire, by purchase, lease, lease-purchase, lease with option to purchase ... auxiliary facilities or education facilities”); *cf.* R.C. 505.267(A)(1) (for the purpose of R.C. 505.267 “[l]ease-purchase agreement’ has the same meaning as a lease with an option to purchase”). *But see* 1963 Op. Att’y Gen. No. 501, p. 513, 514-15 (provisions in R.C. 3313.37 authorizing a board of education to “purchase or lease sites” for schoolhouses, or to “rent suitable schoolrooms,” also authorize the board to enter into a lease with an option to purchase, so long as the lease payments are not credited toward the purchase price of the building); 1958 Op. Att’y Gen. No. 1604, p. 22 (syllabus, paragraph 2) (R.C. 3313.37 authorizes acquiring a building through a lease with an option to purchase, so long as none of the lease payments are credited toward the purchase price).

The conclusion that express statutory authority to acquire property by purchase or lease does not include the authority to acquire property by a lease with an option to purchase is supported by the canon of statutory construction that states “words in statutes should not be construed to be redundant, nor should any words be ignored.” *E. Ohio Gas Co. v. P.U.C.O.*, 39 Ohio St. 3d 295, 299, 530 N.E.2d 875 (1988). As noted above, numerous statutes expressly authorize a public entity to purchase or lease property and also separately authorize that public entity to enter into a lease with an option to purchase. *See, e.g.*, R.C. 306.35(J); R.C. 307.02; R.C. 511.23(B); R.C. 3313.37(B)(1); R.C. 3345.11. If “purchase” or “lease” is meant by the General Assembly to include the power to enter into a lease with an option to purchase, then expressly setting forth the authority to lease with an option to purchase in statutes that already contain the terms “purchase” or “lease” is redundant. There would be no need to separately authorize entering into a lease with an option to purchase. Since words in a statute should not be construed to be redundant, it is apparent that the General Assembly does not intend that the terms “purchase” and “lease” in those statutes also encompass a lease with an option to purchase. We apply the same interpretation of “purchase” and “lease” to R.C. 343.01(C). *See generally Carter v. Div. of Water, City of Youngstown*, 146 Ohio St. 203, 209, 65 N.E.2d 63 (1946) (“[i]t is proper in the construction of statutes to examine other statutory provisions of a kindred character, particularly in respect to the meaning of language employed in the definition of terms”). As used in R.C. 343.01(C), the terms “purchase” and “lease” do not grant the power to enter into a lease with an option to purchase. Therefore, R.C. 343.01(C) does not authorize a board of county commissioners of a county solid waste management district to acquire recycling carts and automated recycling trucks through a lease with an option to purchase.

Authority to Acquire Recycling Carts and Automated Recycling Trucks under R.C. 307.01-02

R.C. 307.01(A) requires a board of county commissioners to “provide equipment ... as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices[.]” R.C. 307.02 provides, in pertinent part, “[t]he board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with an option to purchase, lease, ... equip, and furnish ... county offices[.]” When R.C. 307.01(A) and R.C. 307.02 are read *in pari materia*, it is evident that a board of county commissioners may provide equipment to a county office through the means enumerated in R.C. 307.02. *See* 2012 Op. Att’y Gen. No. 2012-011, at 2-90 (“we find that ‘shall ... provide equipment’ in R.C. 307.01(A), when read *in pari materia* with R.C. 307.02, authorizes a board of county commissioners to lease equipment for use by a board of elections”); 1967 Op. Att’y Gen. No. 67-091 (syllabus) (“[t]he board of county commissioners is permitted to enter into an agreement providing for the lease or lease purchase of such personal property as authorized by Sections 307.01 and 307.02, Revised Code”). Thus, we shall determine whether a county solid waste management district is a county office for the purposes of R.C. 307.01(A) and R.C. 307.02.⁷

“Prior Attorney General opinions have advised that an entity is a county office if it is ‘essentially a subdivision of the county or a subordinate department of the county.’” 2013 Op. Att’y Gen. No. 2013-006, at 2-64 (quoting 1993 Op. Att’y Gen. No. 93-065, at 2-308). Three factors are considered to determine whether an entity is a subordinate department or subdivision of the county: “(1) whether the territory that comprises the entity is coextensive with the territorial limits of the county; (2) whether the county is responsible for the organization and supervision of the entity; and (3) whether the entity is funded by or through the county.” 2013 Op. Att’y Gen. No. 2013-006, at 2-64; *see* 2012 Op. Att’y Gen. No. 2012-011, at 2-89 (applying similar factors to determine whether a board of elections is a county office for the purpose of R.C. 307.01(A)); *see also State ex rel. Attorney Gen. v. Brennan*, 49 Ohio St. 33, 38-39, 29 N.E. 593 (1892) (“where such duties are wholly performed within the limits of a county, and for the people of that county, the salary to be paid by the

⁷ Although R.C. 307.01(A) and R.C. 307.02 impose a duty upon a board of county commissioners to provide offices to county officers and necessary equipment to county offices, prior Attorney General Opinions have concluded that R.C. 307.01(A) and R.C. 307.02 apply to county agencies and county boards. *See, e.g.,* 2012 Op. Att’y Gen. No. 2012-011, at 2-90 (“pursuant to R.C. 307.01(A) and R.C. 307.02, a board of county commissioners may lease equipment for use by a board of elections” (footnote omitted)); 2010 Op. Att’y Gen. No. 2010-001, at 2-3 (syllabus, paragraph 2 overruled, in part, on other grounds by 2015 Op. Att’y Gen. No. 2015-017) (because a county law library resources board (LLRB) is a county agency, a board of county commissioners “has a mandatory obligation under R.C. 307.01 to provide the LLRB with offices and necessary facilities”); 1986 Op. Att’y Gen. No. 86-104, at 2-573 (“the board of county commissioners is required by R.C. 307.01 to provide office space for the children services board”).

disbursing officer of the county, from the funds of the county, the office is a county office”). With respect to the first factor, a county solid waste management district’s statutory authority and its exercise are coextensive with the boundaries of the county. *See* R.C. 343.01(A) (“a county solid waste management district ... consists of all the incorporated and unincorporated territory within the county except as otherwise provided in [R.C. 343.01(A)]”).⁸

With respect to the second factor, “a county solid waste management district is both organized and supervised by the county.” 1992 Op. Att’y Gen. No. 92-060, at 2-247; *see* R.C. 343.01(A)(1) (the board of county commissioners establishes and maintains a county solid waste management district); R.C. 343.02 (the board of county commissioners has authority to enter into contracts on behalf of a county solid waste management district); R.C. 343.022(A) (same as previous parenthetical); R.C. 343.04 (same as previous parenthetical); 1993 Op. Att’y Gen. No. 93-018, at 2-95 (the board of county commissioners serves as the managing authority of a county solid waste management district).⁹ With respect to the final factor, a county solid waste management district is funded by or

⁸ “If a municipal corporation is located in more than one solid waste management district, the entire municipal corporation shall be considered to be included in and shall be under the jurisdiction of the district in which a majority of the population of the municipal corporation resides.” R.C. 343.01(A). Thus, it is possible for a county solid waste management district’s authority to extend beyond the territorial limits of the county. On balance, however, that factor does not outweigh the remaining factors favoring a conclusion that a county solid waste management district is a county office for the purposes of R.C. 307.01(A) and R.C. 307.02. *See* 1993 Op. Att’y Gen. No. 93-018, at 2-100 n.4 (a county solid waste management district is a county agency “notwithstanding the fact that the territory encompassed by a single county solid waste management district may differ from the territory of the county, depending upon municipal boundaries”).

⁹ A county solid waste management district may be managed by a board of trustees of a regional solid waste management authority. *See* R.C. 343.011(A) (“[t]he board of county commissioners of a county ... solid waste management district ... may adopt a resolution proposing the formation of a regional solid waste management authority for the purpose of executing all the duties and responsibilities imposed on or granted to the board under [R.C. Chapter 343]”); R.C. 343.011(B) (once a regional solid waste management authority is formed, “all the duties and responsibilities imposed on or granted to a board of county commissioners ... shall be vested in and exercised by the board of trustees of the regional authority”). A board of trustees of a regional solid waste management authority consists of:

at least the president of the board of county commissioners of each county in the district or his designee, the chief executive officer of the municipal corporation having the largest population within the boundaries of each county in the district or his designee, a member representing the townships within each county in the district chosen by a majority of the boards of township trustees within each county, the health commissioner of the health district having the largest territorial jurisdiction within

through the county. *See* R.C. 343.07(A) (bonds of the county may be issued to pay the “cost of the acquisition, construction, enlargement, modification, or repair of any improvement provided for in [R.C. Chapter 343] in connection with a county ... solid waste management district”); R.C. 343.08(A) (the board of county commissioners sets rates and charges to be paid for services provided by the district to users of the district; “[a]ll moneys collected by or on behalf of a county ... district as rates or charges ... shall be paid to the county treasurer in a county district ... and kept in a separate and distinct fund to the credit of the district”); R.C. 343.08(B) (“[a] board of county commissioners ... may adopt a cost allocation plan that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from the fund of the district”); 1992 Op. Att’y Gen. No. 92-060, at 2-248.

Therefore, a county solid waste management district is a subdivision or subordinate department of the county. *See* 1992 Op. Att’y Gen. No. 92-060, at 2-248 (“it is clear that the Greene County Solid Waste Management District is a subdivision or subordinate department of the county”); 1993 Op. Att’y Gen. No. 93-018, at 2-99 to 2-100 (“a single county solid waste management district is an agency of the county” (footnote omitted)). As a subdivision or subordinate department of the county, a county solid waste management district is a county office for the purposes of R.C. 307.01(A) and R.C. 307.02. Pursuant to a board of county commissioners’ authority to equip county offices under R.C. 307.01-.02, a board of county commissioners of a county solid waste management district that deems it necessary to the proper and convenient conduct of the district may acquire recycling carts or automated recycling trucks by any of the means provided in R.C. 307.02, including a purchase by installment, a lease-purchase agreement, or a lease with an option to purchase.¹⁰

each county in the district or his designee, and one member representing the public to be appointed by the other members of the board.

R.C. 343.011(A). Thus, a county solid waste management district that has formed a regional solid waste management authority is not organized and supervised by the board of county commissioners. That fact may alter the analysis of whether a county solid waste management district that has formed a regional solid waste management authority is supervised and organized by the county. We need not decide that issue here as the Portage County Solid Waste Management District is managed by the Board of Commissioners of Portage County. *See* Ohio E.P.A. & Resource Recycling Systems, *Solid Waste Management Plan 2015 Portage County Solid Waste Management District*, 3 (2015), http://www.co.portage.oh.us/solidwaste/pdfs/___PORTAGE_FINAL%202.10.2015.pdf.

¹⁰ When a board of county commissioners enters into an agreement with a private entity to acquire recycling carts and automated recycling trucks, consideration should be given to Ohio Const. art. VIII, § 6, which prohibits a county from lending its aid or credit to a private entity, and Ohio Const. art. VIII, §13, which sets forth exceptions to the prohibition of Ohio Const. art. VIII, § 6. *See* 1988 Op. Att’y Gen. No. 88-009, at 2-37 n.1 (“[t]he provisions of Ohio Const. art. VIII, §§ 6 and 13 should, thus, be considered when county and private interests unite for the provision of solid waste disposal facilities”). In addition, Ohio Const. art. XII, § 11, providing that bonded indebtedness may

Conclusions

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

1. A board of county commissioners may not borrow moneys from a private, for-profit company to purchase recycling carts and automated recycling trucks for a county solid waste management district.
2. Pursuant to R.C. 343.01(C), a board of county commissioners may lease recycling carts and automated recycling trucks for a county solid waste management district from a private, for-profit company.
3. Pursuant to a board of county commissioners' authority to equip county offices under R.C. 307.01-.02, a board of county commissioners of a county solid waste management district that deems it necessary to the proper and convenient conduct of the district may acquire recycling carts or automated recycling trucks by any of the means provided in R.C. 307.02, including a purchase by installment, a lease-purchase agreement, or a lease with an option to purchase.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

not be incurred unless a tax is levied to repay the debt, may apply depending upon the terms of the agreement. *See* 2006 Op. Att'y Gen. No. 2006-008, at 2-72 (“a county cannot make a commitment to incur debt unless it has a source of income to pay back the debt that it is incurring”); 1985 Op. Att'y Gen. No. 85-008, at 2-31 n.6 (“if the county creates a present indebtedness in entering into a lease/purchase agreement for the county jail, a tax must be levied to retire the debt”). A board of county commissioners must also comply with applicable competitive bidding requirements in the acquisition of property for a county solid waste management district. *See* 1992 Op. Att'y Gen. No. 92-060, at 2-248 (“the Board of County Commissioners of Greene County is subject to the competitive bidding requirements of R.C. 307.86 when it transacts the business of the Greene County Solid Waste Management District”).