

OPINION NO. 82-020**Syllabus:**

R.C. 307.441 does not authorize a board of county commissioners to purchase liability insurance for county jail inmates engaged in employment outside the county jail pursuant to a work-release program.

To: James R. Livingston, Miami County Prosecuting Attorney, Troy, Ohio
By: William J. Brown, Attorney General, April 6, 1982

I have before me your request for an opinion regarding the authority of a board of county commissioners to purchase liability insurance on behalf of county jail inmates. Specifically, you ask whether R.C. 307.441 authorizes a board to purchase liability insurance for county jail inmates participating in work-release programs.

Work release programs for county jail inmates may be established by the courts pursuant to R.C. 5147.28, which provides that:

(A) The court of common pleas and each municipal and county court in a county in which all of such courts agree on uniform standards may provide by rule for a work-release program to permit any prisoner in a county or city jail or workhouse, other than a prisoner sentenced under a non-suspendable sentence, to be employed with his consent outside of the jail or workhouse. In any county in which the common pleas court, after reasonable efforts to obtain such an agreement, determines that such is not possible, such court, after reasonable notice to all interested courts and officials, shall

place into effect rules of such court making provision for a work-release program available to all courts within the county.

(B) Any court which establishes a work-release program under division (A) of this section shall adopt rules prescribing the conditions under which a prisoner is to leave the jail or workhouse during the hours of his employment and go to and from work.

(C) Upon approval of the sentencing judge located in any jurisdiction having a work-release program, any person sentenced to a county or city jail or workhouse shall be permitted to participate in a work-release program.

(D) The court shall not assign a prisoner to work in an establishment where a legally constituted strike is in progress.

(E) Any prisoner participating in a work-release program shall be paid remuneration, subject to garnishment, and have hours and other conditions of work that are substantially equal to those prevailing for similar work in the locality. (Emphasis added.)

The method in which an inmate's earnings from work release employment is to be disbursed is set forth in R.C. 5147.29 as follows:

(A) A prisoner participating in a work-release program shall surrender his earnings, less standard payroll deductions required by law, to a person designated by the court which has established the work-release program.

(B) The person designated by the court to collect the earnings of the prisoner shall maintain complete and accurate records as to all prisoners employed in a work-release program with respect to all moneys received and disbursed. Each prisoner shall be furnished a written statement of his account at least every sixty days.

(C) The earnings of the prisoner participating in a work-release program shall be disbursed in the following order:

(1) Reimbursement of the county or city for the direct costs of administering the program and the cost of boarding the prisoner in accordance with division (D) of this section;

(2) Support of the prisoner's dependents as ordered by the sentencing judge;

(3) Necessary travel expenses to and from work and other expenses incidental to employment;

(4) Payment of fines, court costs, and debts acknowledged by the prisoner in writing subsequent to his sentencing or which have resulted in garnishment or other attachment of personal earnings;

(5) The balance to the prisoner upon discharge from the sentence.

(D) The court may establish rules to determine the amount of the payments that are required to be made under division (C)(1) of this section from a prisoner's earnings to reimburse the county or city for the costs of boarding the prisoner while on the work-release program. The rules shall require the payment for each day of boarding to be based upon a uniform schedule based upon the average weekly earnings of the prisoner and upon the number of persons actually dependent upon the prisoner for their support. The payment may be less than, but shall not exceed, the actual cost of boarding the prisoner for a day. (Emphasis added.)

Neither R.C. 5147.28 nor R.C. 5147.29 authorizes a board of county commissioners to purchase liability insurance on behalf of county inmates.

R.C. 307.441 authorizes boards of county commissioners to purchase liability insurance for certain specified county officials and for county employees. R.C. 307.441(E) states that "[t]he board of county commissioners of each county may procure a policy or policies of insurance insuring any county employee against liability arising from the performance of his official duties." As county jail inmates are not officers of the county, this statute would authorize the purchase of

liability insurance for county jail inmates working outside the county jail as part of a work-release program only if such inmates are considered county employees.

As a general rule "[t]he relationship of employer and employee arises by contract either express or implied." American Insurance Group v. McCowin, 7 Ohio App. 2d 62, 65, 218 N.E.2d 746, 749, (1966). An employment relationship is evidenced by payment of salary or wages by the employer to the employee. Home Indemnity Co. v. Village of Plymouth, 146 Ohio St. 96, 64 N.E.2d 248 (1945). It is, however, evident that under the terms of R.C. 5147.28 no contract of employment, expressed or implied, exists between the county and the inmates. Any contract of employment would run between the third party private employer and the inmates. The county merely permits the inmates to avail themselves of employment opportunities outside the jail. The actual employer is not the county. Further, R.C. 5147.29, which deals with disbursement of the inmate's earnings, makes it clear that the private employer, and not the county, pays the inmates' wages for work performed outside the jail. Absent an employment contract between the county and its jail inmates, and in view of the fact the county does not pay the inmates for work performed in a work-release program, I must conclude that county jail inmates working outside the jail as part of a work-release program are not employees of the county. See also 1982 Op. Att'y Gen. No. 82-007 (prisoners working outside the jail as part of a work-release program, or inside the jail as trustees, are not employees of the county for the purpose of the Ohio Workers' Compensation Act). Accordingly, R.C. 307.441 does not authorize a board of county commissioners to purchase liability insurance for county jail inmates participating in a work-release program.

While a board of county commissioners does not have the authority to purchase liability insurance in this instance, I note that the courts of common pleas have been granted rule-making power with respect to the establishment of conditions for work-release programs. A court of common pleas may, therefore, determine that such insurance is a necessary prerequisite for participation in such programs, and may by rule provide for the procurement of such insurance. It would appear that the court could require that the cost of the insurance be withheld from the inmates' earnings as part of the cost of administering the program, pursuant to R.C. 5147.29(C)(1), or as an expense incidental to employment, pursuant to R.C. 5147.29(C)(3). If the court of common pleas so provides, a board of county commissioners, or other persons responsible for the administration of the program, could procure such insurance on behalf of the county inmates.

In specific response to your question, however, it is my opinion, and you are advised, that R.C. 307.441 does not authorize a board of county commissioners to purchase liability insurance for county jail inmates engaged in employment outside the county jail pursuant to a work-release program.