

June 14, 2016

The Honorable Dean Holman
Medina County Prosecuting Attorney
72 Public Square
Medina, Ohio 44256

SYLLABUS:

2016-018

1. The executive committee of a countywide emergency management agency that has been established by all of the political subdivisions in the county pursuant to R.C. 5502.26(A) may direct its director/coordinator of emergency management to purchase “equipment” as defined in R.C. 5502.21(Q) and provide that equipment to political subdivisions in the county that operate countywide technical rescue teams pursuant to mutual aid agreements. The purchase and provision of equipment in this manner shall comport with the program for emergency management established by the countywide emergency management agency.
2. The director/coordinator of emergency management for a countywide emergency management agency that has been established by all of the political subdivisions in the county pursuant to R.C. 5502.26(A) may purchase “equipment” as defined in R.C. 5502.21(Q) using moneys contributed to the countywide emergency management agency by political subdivisions in the county that operate countywide technical rescue teams pursuant to mutual aid agreements. The use of the moneys in this manner shall be consistent with the terms of the written agreement establishing the countywide emergency management agency.



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OPINION NO. 2016-018

The Honorable Dean Holman
Medina County Prosecuting Attorney
72 Public Square
Medina, Ohio 44256

Dear Prosecutor Holman:

We have received your request for an opinion regarding the authority of a countywide emergency management agency (“CEMA”) to purchase emergency response equipment for countywide “technical rescue teams.” All of the political subdivisions in the county have entered into a written agreement to establish a CEMA. Some of those political subdivisions operate countywide technical rescue teams pursuant to mutual aid agreements. The CEMA purchases emergency response equipment for the countywide technical rescue teams using financial contributions made to the CEMA by the political subdivisions that participate in the teams’ operations. You ask whether the CEMA has authority to purchase and use equipment in this manner. Resolution of your inquiry may be found, in part, in the statutes that govern emergency management in the state of Ohio. *See* R.C. 5502.21-.51.

Each political subdivision in the state of Ohio “is required to engage in emergency management.” 2015 Op. Att’y Gen. No. 2015-027, at 2-276; *see also* 10B Ohio Admin. Code 4501:3-3-01(A) (“[e]ach political subdivision shall create a local capability for emergency management”). For purposes of the statutes that govern emergency management, “[e]xcept as provided in [R.C. 5502.41], ‘political subdivision’ means a county, township, or municipal corporation in” the state of Ohio. R.C. 5502.21(M). R.C. 5502.21(G) defines “emergency management” as follows:

“Emergency management” includes all emergency preparedness and civil defense activities and measures, whether or not mentioned or described in [R.C. 5502.21] to [R.C. 5502.51], that are designed or undertaken to minimize the effects upon the civilian population caused or that could be caused by any hazard and that are

necessary to address mitigation, emergency preparedness, response, and recovery.¹ (Footnote added.)

R.C. 5502.21(H) defines “emergency preparedness” as “an integral part of emergency management that includes those activities and measures designed or undertaken in preparation for any hazard ... and that will enhance the probability for preservation of life, property, and the environment.” Divisions (H)(1) through (12) of R.C. 5502.21 provide examples of the types of activities that constitute emergency preparedness. The activities listed in R.C. 5502.21(H)(1)-(12) are not meant to be limiting. *See* R.C. 5502.21(H) (“[e]mergency preparedness’ includes, without limitation” the activities listed in R.C. 5502.21(H)(1)-(12)).

R.C. 5502.21(D) defines “civil defense” to mean

all those activities and measures designed or undertaken to minimize the effects upon the civilian population caused or that would be caused by any hazard and to effect emergency repairs to, or the emergency restoration of, vital equipment, resources, supplies, utilities, and facilities necessary for survival and for the public health, safety, and welfare that would be damaged or destroyed by any hazard.

Activities that fall under the definition of “civil defense” include “[t]he control and use of emergency communications, lighting, and warning equipment and systems,” R.C. 5502.21(D)(1)(d), “[a]ctivities necessary for firefighting, rescue, emergency, medical, health, and sanitation services,” R.C. 5502.21(D)(2)(a), and “[a]ny other activities that may be necessary for survival and the overall health, safety, and welfare of the civilian population.” R.C. 5502.21(D)(2)(k).

The term “[h]azard’ means any actual or imminent threat to the survival or overall health, safety, or welfare of the civilian population that is caused by any natural, human-made, or technological event. ‘Hazard’ includes, without limitation, an attack, disaster, and emergency.” R.C. 5502.21(I). *See also* R.C. 5502.21(B) (defining “attack”); R.C. 5502.21(E) (defining “disaster”).

A political subdivision is required to “create a local capability for emergency management” in one of three ways. *See* rule 4501:3-3-01(A); 2015 Op. Att’y Gen. No. 2015-

¹ “‘Mitigation’ means all those activities that reduce or eliminate the probability of a hazard” and any “long-term activities and measures designed to reduce the effects of unavoidable hazards.” R.C. 5502.21(L). “‘Recovery’ includes all those activities required and necessary to return an area to its former condition to the extent possible following the occurrence of any hazard.” R.C. 5502.21(N). “‘Response’ includes all those activities that occur subsequent to any hazard and that provide emergency assistance from the effects of any such hazard, reduce the probability of further injury, damage, or destruction, and are designed or undertaken to speed recovery operations.” R.C. 5502.21(O).

027, at 2-276; Ohio Legislative Service Comm'n, Final Bill Analysis, H.B. 605 (2002). First, “[t]he board of county commissioners of a county and the chief executive of all or a majority of the other political subdivisions within the county may enter into a written agreement establishing a countywide emergency management agency.” R.C. 5502.26(A); *see also* R.C. 5502.21(C) (“[c]hief executive’ means ... the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state”). Second, “[i]n lieu of establishing a [CEMA] ..., the boards of county commissioners of two or more counties ... may enter into a written agreement establishing a regional authority for emergency management.”² R.C. 5502.27(A). Third, if a political subdivision does not enter into an agreement to establish a CEMA or a regional authority for emergency management, the chief executive of that political subdivision “shall establish a program for emergency management within that political subdivision that meets all of the... criteria” set forth in divisions (A) through (D) of R.C. 5502.271. R.C. 5502.271. In the situation you present, all of the political subdivisions in the county have entered into a written agreement to establish a CEMA.

R.C. 5502.26 governs the establishment and operation of a CEMA. A CEMA “implement[s] emergency management in the county in accordance with [R.C. 5502.26]” through an executive committee composed “of at least ... one county commissioner representing the board of county commissioners entering into the agreement; five chief executives representing the municipal corporations and townships entering into the agreement; and one nonelected representative.”³ R.C. 5502.26(A). Under R.C. 5502.26(A), a CEMA “shall establish a program for emergency management that” satisfies all of the following criteria:

- (1) Is in accordance with [R.C. 5502.21] to [R.C. 5502.51], rules adopted under those sections, local ordinances pertaining to emergency management, [and specified federal laws, rules, and regulations];
- (2) Includes, without limitation, development of an all-hazards emergency operations plan that has been coordinated with all agencies, boards, and divisions having emergency management functions within the county;
- (3) Includes the preparation and conduct of an annual exercise of the county’s all-hazards emergency operations plan;
- (4) Is applicable to all political subdivisions entering into the countywide agreement.

² The boards of county commissioners of two or more counties may only establish a regional authority for emergency management if they obtain the consent of “the chief executives of a majority of the participating political subdivisions of each county involved.” R.C. 5502.27(A).

³ The members of the executive committee are appointed by a countywide advisory group that consists of “[a] representative from each political subdivision entering into the agreement, selected by the political subdivision’s chief executive.” R.C. 5502.26(A).

R.C. 5502.26(A) requires the executive committee to appoint a director/coordinator of emergency management who “shall be responsible for coordinating, organizing, administering, and operating emergency management in accordance with the [CEMA]’s [emergency management] program.” The director/coordinator of emergency management for the CEMA is “subject to the direction and control of the executive committee.” R.C. 5502.26(A). R.C. 5502.26(C) provides that a CEMA “shall be considered a county board and shall receive the services of the auditor, treasurer, and prosecuting attorney of the county.”

A CEMA May Purchase Emergency Response Equipment

You ask whether a CEMA may purchase emergency response equipment for countywide technical rescue teams that are operated by political subdivisions in the county pursuant to mutual aid agreements. You ask whether the CEMA may purchase the equipment using moneys contributed to the CEMA by the political subdivisions that participate in the teams’ operations. We will begin our analysis by addressing whether a CEMA has the authority to purchase emergency response equipment.

R.C. 5502.26(A) requires a CEMA to establish a program for emergency management and requires the CEMA’s director/coordinator of emergency management to coordinate, organize, administer, and operate emergency management in accordance with that program. The director/coordinator of emergency management for the CEMA is “subject to the direction and control of the executive committee.” R.C. 5502.26(A). Thus, pursuant to R.C. 5502.26(A), the executive committee of a CEMA may direct and control the ways in which the director/coordinator of emergency management for the CEMA shall coordinate, organize, administer, and operate emergency management in accordance with the CEMA’s program for emergency management.

The terms “coordinate,” “organize,” “administer,” and “operate” are not defined for purposes of R.C. 5502.26 or more generally for purposes of the statutes that govern emergency management. When not defined by statute, it is appropriate to assign a term its common meaning. *See* R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”). *Webster’s New World College Dictionary* 327 (5th ed. 2014) defines “coordinate” to mean “to set in order, arrange.” *Webster’s New World College Dictionary* 1030 defines “organize” to mean “to arrange in an orderly way ... to make plans or arrange for” or “to bring into being; establish.” *Webster’s New World College Dictionary* 18 defines the term “administer” to mean “to manage or direct.” *Webster’s New World College Dictionary* 1025 defines the term “operate” to mean “to bring about a desired or appropriate effect.” Therefore, R.C. 5502.26(A) requires a director/coordinator of emergency management for a CEMA, subject to the direction and control of the CEMA’s executive committee, to set emergency management in order, arrange or make plans for emergency management, bring emergency management into being, manage or direct emergency management, and bring about emergency management in accordance with the program for emergency management established by the CEMA.

The statutes that govern emergency management do not specify the ways in which a CEMA executive committee shall direct a director/coordinator of emergency management for a CEMA to coordinate, organize, administer, and operate emergency management. R.C. 5502.26(A) provides only that the coordination, organization, administration, and operation of emergency management shall be undertaken in accordance with the CEMA's emergency management program. "Absent a provision of law specifying how a particular duty is to be carried out, it is assumed that it may be performed in any reasonable manner." 1983 Op. Att'y Gen. No. 83-057, at 2-235; *see also* 1928 Op. Att'y Gen. No. 2955, vol. IV, p. 2736, at 2740 ("[t]he delegation of a power to accomplish a certain end, necessarily carries with it the power to do all things necessary to consummate that purpose"). Thus, the executive committee of a CEMA shall direct a director/coordinator of emergency management for the CEMA to set emergency management in order, arrange or make plans for emergency management, bring emergency management into being, manage or direct emergency management, and bring about emergency management in any reasonable manner, so long as the actions taken are in accordance with the CEMA's program for emergency management.

The purchase of emergency response equipment constitutes emergency management. "The procurement ... of equipment" is an emergency preparedness activity under R.C. 5502.21(H)(9). The term "equipment," as used in the statutes that govern emergency management, "includes fire-fighting, first-aid, emergency medical, ... and rescue equipment and materials" as well as "hazardous materials response gear ... and all other means, in the nature of personal property, to be used exclusively in the protection of individuals and property against the effects of any hazard." R.C. 5502.21(Q). For the purpose of this opinion, we presume that the emergency response equipment about which you inquire constitutes "equipment" as that term is defined in R.C. 5502.21(Q) and used in R.C. 5502.21(H)(9).

"Procurement" is not defined in R.C. 5502.21 or in any other statute, chapter, or title in the Revised Code. *Black's Law Dictionary* 1224 (7th ed. 1999) defines "procurement" to mean "[t]he act of getting or obtaining something." For the purpose of R.C. 5502.21(H)(9), "procurement" means the act of getting or obtaining equipment. Purchasing equipment undoubtedly constitutes getting or obtaining equipment. Therefore, the purchase of emergency response equipment is an emergency preparedness activity under R.C. 5502.21(H)(9).⁴

An emergency preparedness activity is considered "emergency management" under R.C. 5502.21(G) if the activity is "designed or undertaken to minimize the effects upon the civilian

⁴ The purchase of property is an act of procurement. *See, e.g.*, R.C. 9.90(A)(1) (authorizing the board of trustees or other governing body of a state institution of higher education to "purchase, or otherwise procure" life insurance and other benefits on behalf of its employees); R.C. 305.171(A) ("[t]he board of county commissioners of any county may contract for, purchase, or otherwise procure" insurance and other benefits for its officers and employees); *see also* 1978 Op. Att'y Gen. No. 78-055 (treating the term "procure" as used in R.C. 307.441(E) as synonymous with "purchase").

population ... that could be caused by” an emergency and is “necessary to address mitigation, emergency preparedness, response, and recovery.” Emergency response equipment is used by rescue personnel to protect “individuals and property against the effects of” an emergency. R.C. 5502.21(Q). In this instance, the fire departments of the political subdivisions in the county have advised the CEMA that the purchase of emergency response equipment is necessary to aid the political subdivisions in responding to local emergencies. There is no question that in these circumstances, the purchase of equipment is “designed or undertaken to minimize the effects upon the civilian population ... that could be caused by any hazard” and is “necessary to address mitigation, emergency preparedness, response, and recovery.” R.C. 5502.21(G). Accordingly, if a CEMA establishes a program for emergency management that plans for or otherwise contemplates the purchase of emergency response equipment, R.C. 5502.26(A) requires the director/coordinator of emergency management for the CEMA, subject to the direction and control of the executive committee, to set the purchase of emergency response equipment in order, arrange or make plans for the purchase of emergency response equipment, bring the purchase of emergency response equipment into being, manage or direct the purchase of emergency response equipment, and bring about the purchase of emergency response equipment in accordance with that program. *See* R.C. 5502.26(A).

Statutes governing emergency management are to be liberally construed. 1957 Op. Att’y Gen. No. 735, p. 269, at 271 (“statutes making provision for prosecution of war, or the protection against public calamity or disaster, are to be liberally construed”); 1954 Op. Att’y Gen. No. 4224, p. 460, at 465 (“statutes designed to alleviate disaster, public calamity, and to provide for national defense are to be liberally interpreted to aid in the attainment of the obvious legislative purpose”); 1951 Op. Att’y Gen. No. 168, p. 44, at 48 (“[i]t is a well settled rule of statutory construction that ... an emergency measure[] is entitled to a liberal interpretation, and this is particularly true when the emergency is of such character that it has produced or may produce a great disaster or public calamity”). R.C. 5502.26(A) authorizes a CEMA executive committee to direct a director/coordinator of emergency management for a CEMA to, among other things, arrange or bring about the purchase of emergency response equipment in any reasonable manner. Pursuant to this authority, the executive committee may direct a director/coordinator of emergency management for a CEMA to arrange or bring about the purchase of emergency response equipment by purchasing the emergency response equipment on behalf of the CEMA. The purchase of emergency response equipment by the director/coordinator of emergency management for a CEMA is a reasonable method by which the director/coordinator of emergency management for the CEMA may arrange or bring about the purchase of emergency response equipment pursuant to R.C. 5502.26(A).

Accordingly, we conclude that a director/coordinator of emergency management for a CEMA may, subject to the direction and control of the CEMA’s executive committee, purchase emergency response equipment on behalf of the CEMA when the emergency response

equipment constitutes “equipment” under R.C. 5502.21(Q) and the purchase of the emergency response equipment is in accordance with the CEMA’s emergency management program.⁵

A CEMA May Provide Political Subdivisions within the County Emergency Response Equipment Purchased by the CEMA

The second part of your inquiry asks whether emergency response equipment that has been purchased by a CEMA may be used by countywide technical rescue teams that are operated by political subdivisions within the county pursuant to mutual aid agreements.⁶ We find that a CEMA may, in establishing and implementing a program for emergency management pursuant to R.C. 5502.26(A), provide emergency response equipment purchased by the CEMA to political subdivisions that operate technical rescue teams.

R.C. 5502.26(A)(2) requires a CEMA to establish a program for emergency management that includes, among other things, the “development of an all-hazards emergency operations plan that has been coordinated with all agencies, boards, and divisions having emergency management functions within the county.” R.C. 5502.26(A)(4) provides that the emergency management program established and implemented by the CEMA shall be “applicable to all political subdivisions entering into the ... agreement” establishing the CEMA.

The Ohio Emergency Management Agency publishes a manual and checklist to guide the preparation of an all-hazards emergency operations plan. *See Ohio Emergency Management Agency, Plan Development and Review Guidance for Local Emergency Operations Plans* (January 2015), available at <http://ema.ohio.gov/Documents/pdfs/PDRG%20Full%20Document>

⁵ An emergency management program established by a CEMA shall take into account any terms included in the written agreement establishing the CEMA and remain consistent with those terms.

⁶ Provisions in the Revised Code authorize political subdivisions to enter into mutual aid agreements for the provision of emergency and non-emergency services. *See, e.g.*, R.C. 9.60 (fire protection); R.C. 311.07(B) (provision of law enforcement or fire protection personnel and appropriate equipment); R.C. 505.37(B) (use and operation of fire-fighting equipment); R.C. 505.43 (police protection); R.C. 737.04 (police protection); R.C. 1503.14 (forest-fire control); R.C. 5502.29 (mutual aid for emergency services); R.C. 5502.41 (intrastate mutual aid compact); *see also* R.C. 307.15 (board of county commissioners may contract to perform whatever function the subdivisions or legislative authorities enumerated in that section are authorized to perform). A political subdivision may enter into a mutual aid agreement with another political subdivision notwithstanding whether a CEMA has been established in the county. Mutual aid agreements are a component of emergency management that enable the political subdivisions in the county to work in unison to provide emergency management services to residents of the county by sharing personnel, equipment, and other costs of providing such services. *See Ohio Legislative Service Comm’n, Final Bill Analysis, H.B. 605 (2002).*

%20w%20Checklist%2020150127.pdf. The Ohio Emergency Management Agency recommends that an all-hazards emergency operations plan identify, among other things, “the key functions that local agencies will accomplish to support local operations during an emergency.” Plan Development & Guidance, at 2-3. As part of this identification process, the Ohio Emergency Management Agency suggests that a plan “[i]dentify and describe mutual aid agreements that are in place.” *Id.*

The Ohio Emergency Management Agency recommends that the development of an emergency operations plan include five key steps. *Id.* at 1-1. The third of these steps is referred to as “a Capability Assessment.” *Id.* “In the Capability Assessment,” the agencies working together to develop the plan “determine how prepared their jurisdiction is to respond to ... hazards” and “how the jurisdiction will respond to and overcome” any gaps in their response abilities. *Id.* at 1-3. The Ohio Emergency Management Agency suggests that the Capability Assessment identify, among other things, “resource acquisition needs.” *Id.*

As part of its development of an all-hazards operations plan, it is possible that a CEMA may identify a need to acquire emergency response equipment for countywide technical rescue teams that are operated by political subdivisions within the county pursuant to mutual aid agreements. A CEMA may determine, in coordination with the political subdivisions in the county, that under the circumstances, a practical way to acquire emergency response equipment is to purchase the equipment using moneys available to the CEMA. Nothing in the statutes governing emergency management prohibits a CEMA from exercising the authority granted to it thereunder for the benefit of political subdivisions in the county.

The establishment of a CEMA is one of the three ways a political subdivision may develop a local capability for emergency management. A CEMA “shall be supported financially by the political subdivisions entering into the ... agreement” establishing the CEMA and is governed by an executive committee comprising representatives from at least six of the political subdivisions that are parties to the agreement. R.C. 5502.26(A). The establishment and implementation of an emergency management program under R.C. 5502.26(A) shall be “applicable to all political subdivisions entering into the ... agreement” establishing the CEMA. R.C. 5502.26(A)(4). Therefore, the authority of a CEMA to purchase emergency response equipment should be used for the benefit of the political subdivisions that entered into the agreement to establish the CEMA.⁷

Accordingly, we conclude that a CEMA, through its director/coordinator of emergency management, may purchase emergency response equipment and provide that equipment to countywide technical rescue teams operated by political subdivisions in the county pursuant to mutual aid agreements, so long as the purchase and provision of the emergency response equipment is in accordance with the emergency management program established by the CEMA.

⁷ You advise that all the political subdivisions in Medina County have entered into the agreement establishing the CEMA.

A CEMA May Purchase Emergency Response Equipment Using Moneys Contributed to the CEMA by the Political Subdivisions that Operate Countywide Technical Rescue Teams Pursuant to Mutual Aid Agreements

The final portion of your inquiry asks whether a CEMA may purchase emergency response equipment using moneys contributed to the CEMA by the political subdivisions that operate the countywide technical rescue teams.

A CEMA may receive financial support from a variety of sources, including “federal, state, and local grants, appropriations made by the political subdivisions [that enter into the agreement to establish the CEMA], and private offers of assistance.” Ohio Legislative Service Comm’n, Final Bill Analysis, H.B. 530 (2006). R.C. 5502.26(A) states unambiguously that a CEMA “shall be supported financially by the political subdivisions entering into the [agreement to establish the CEMA].” R.C. 5502.26(A). R.C. 5502.31 authorizes those political subdivisions to “make appropriations for the payment of the expenses of [their] local activities for emergency management ... chargeable to [each] political subdivision by agreement in any county wherein a [CEMA] has been established pursuant to [R.C. 5502.26].”

R.C. 5502.26(A) and R.C. 5502.31 clearly authorize political subdivisions that enter into an agreement to establish a CEMA to appropriate money for the purpose of supporting the functions of the CEMA. *See generally Symmes Twp. Bd. of Trs. v. Smyth*, 87 Ohio St. 3d 549, 553, 721 N.E.2d 1057 (2000) (“[w]hen the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need ... to apply the rules of statutory interpretation”); 2014 Op. Att’y Gen. No. 2014-039, at 2-347 (“[t]he plain language of the statute controls when the statute’s meaning is not ambiguous”). Moneys contributed to the CEMA by each political subdivision and the purpose for which the moneys may be used may be specified in the agreement that establishes the CEMA. *See* R.C. 5502.31. In this instance, all of the political subdivisions in Medina County have entered into the agreement that establishes the CEMA. Therefore, the political subdivisions that operate the countywide technical rescue teams pursuant to mutual aid agreements may make financial contributions to the CEMA pursuant to R.C. 5502.26(A) and R.C. 5502.31. We presume, for the purpose of this opinion, that nothing in the agreement establishing the CEMA limits the way in which the CEMA may use the moneys contributed to it by the political subdivisions in the county. Accordingly, we conclude that the CEMA, in these circumstances, may purchase emergency response equipment using moneys contributed to the CEMA by the political subdivisions in the county that operate countywide technical rescue teams pursuant to mutual aid agreements.

Conclusions

In sum, it is our opinion, and you are hereby advised that:

1. The executive committee of a countywide emergency management agency that has been established by all of the political subdivisions in the county pursuant to R.C. 5502.26(A) may direct its director/coordinator of

emergency management to purchase “equipment” as defined in R.C. 5502.21(Q) and provide that equipment to political subdivisions in the county that operate countywide technical rescue teams pursuant to mutual aid agreements. The purchase and provision of equipment in this manner shall comport with the program for emergency management established by the countywide emergency management agency.

2. The director/coordinator of emergency management for a countywide emergency management agency that has been established by all of the political subdivisions in the county pursuant to R.C. 5502.26(A) may purchase “equipment” as defined in R.C. 5502.21(Q) using moneys contributed to the countywide emergency management agency by political subdivisions in the county that operate countywide technical rescue teams pursuant to mutual aid agreements. The use of the moneys in this manner shall be consistent with the terms of the written agreement establishing the countywide emergency management agency.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General