

OPINION NO. 86-011**Syllabus:**

1. Pursuant to R.C. 307.42, a board of county commissioners may promulgate a regulation requiring a county employee to wear his seat belt while operating a county owned vehicle on county business. The board of county commissioners is without authority, however, to require a county employee to wear his seat belt while operating a privately owned vehicle on county business.
2. A board of county commissioners is without authority to discipline an employee of an elected county official for failing to adhere to a regulation promulgated by the board of county commissioners pursuant to R.C. 307.42 relating to the use of a county owned vehicle.

To: Wilfrid G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 27, 1986

I have before me your request for my opinion regarding whether a board of county commissioners may promulgate a regulation requiring a county employee to wear his seat belt while on county business and while he is operating either a

county owned vehicle or his own vehicle.¹ You have also asked if the board of county commissioners may discipline an employee for failing to wear his seat belt when the employee is an employee of an elected official.

It is well settled that a board of county commissioners is a creature of statute and has only those powers expressly granted by statute or necessarily implied from such express powers. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Concerning the purchase or lease of motor vehicles by a board of county commissioners, R.C. 307.41 states:

Whenever the board of county commissioners deems it necessary to purchase or lease motor vehicles for its use, or for the use of any department, commission, board, office, or agency under its direct supervision, or for the use of any elected county official or his employees, it shall adopt a resolution setting forth the necessity for such purchase or lease, together with a statement of the kind and number of vehicles required and the estimated cost of purchasing or leasing each. Upon adoption of the resolution the board may purchase or lease such vehicles, subject to sections 307.86 to 307.92 of the Revised Code. (Emphasis added.)

With respect to vehicles purchased or leased pursuant to R.C. 307.41, R.C. 307.42 states, in pertinent part:

Motor vehicles purchased or leased as provided by section 307.41 of the Revised Code shall be for the use of the county commissioners or other county officials, their use to be subject to the regulation of the board of county commissioners. Vehicles shall be used by the officials, deputies, and employees in lieu of hiring vehicles unless the county vehicles are not available for such use....No official or employee shall use or permit the use of any vehicle or any supplies for it, except in the transaction of public business or work of the county. (Emphasis added.)

See R.C. 307.43 (prohibiting a person from using a county vehicle "for any purpose other than the transaction of official business or in a ridesharing arrangement established in accordance with [R.C. 1551.25]").

Pursuant to R.C. 307.41, a board of county commissioners may purchase or lease motor vehicles "for its use, or for the

¹ R.C. 4513.263, enacted in Am. Sub. S.B. 54, 116th Gen. A. (1986) (eff. May 6, 1986), provides, in pertinent part, that no person shall operate an automobile on any street or highway unless he and any passengers in the front seat of the automobile are wearing all of the available elements of a properly adjusted occupant restraining device. See generally R.C. 4513.99(F)-(I) (imposing fines for violations of R.C. 4513.263). Thus, after May 6, 1986, the driver and front-seat passengers of all automobiles must wear an occupant restraining device, regardless of who operates the automobile or the purpose for which the automobile is being operated.

use of any department, commission, board, office, or agency under its direct supervision, or for the use of any elected county official or his employees."² The use of any such vehicle is "subject to the regulation of the board of county commissioners." R.C. 307.42. Thus, since a board of county commissioners may regulate the use of those vehicles purchased or leased pursuant to R.C. 307.41, the board may exercise its discretion in determining the types of regulation to adopt for the use of such vehicles. See Jewett v. Valley Railway Co., 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner"). See generally State ex rel. Kahle v. Rupert, 99 Ohio St. 17, 122 N.E. 39 (1918) (a public officer is required to exercise an intelligent discretion in the performance of his official duty). I have no basis for concluding that the adoption of a regulation requiring county employees to use seat belts while operating a vehicle purchased or leased by the county pursuant to R.C. 307.41 is unreasonable. Thus, it appears that, pursuant to R.C. 307.42, should the county commissioners determine that the regulation you propose is reasonable, they may adopt such a regulation.

Part of your question, however, concerns the authority of the board of county commissioners to adopt a similar policy with regard to county employees' use of private vehicles while on county business. The authority of a board of county commissioners to adopt regulations under R.C. 307.42 extends to the use of only those vehicles purchased or leased by the board pursuant to R.C. 307.41, and thus, has no application to the use of privately owned vehicles by county employees while on county business. There is no statutory provision that expressly empowers the board of county commissioners to regulate county employees' use of privately owned vehicles. Further, the fact that the legislature has provided in R.C. 307.42 for the board's regulation of the use of vehicles purchased or leased under R.C. 307.41 leads me to conclude that the board's authority to regulate the use of privately owned vehicles by county employees while on county business may not be implied. In the absence of statutory authority, either express or implied, to so regulate the use of privately owned vehicles by county employees, I must conclude that the board of county commissioners may not adopt such a regulation.

Your second question reads as follows: "If the [board of county commissioners] is able to enact such a policy, is there

² The syllabus of 1955 Op. Att'y Gen. No. 4806, p. 68 states: "A board of county commissioners is without authority to lease motor vehicles for the use of the sheriff and his deputies." At the time 1955 Op. No. 4806 was issued, R.C. 307.41 authorized the board of county commissioners only to purchase motor vehicles for the sheriff or sanitary engineer, their deputies and employees. 1925 Ohio Laws 365 (Am. S.B. 44). R.C. 307.41 was amended, however, in 1975-1976 Ohio Laws, Part I, 1540 (Am. H.B. 84, eff. Aug. 11, 1975) to read in its present form authorizing the county commissioners also to lease motor vehicles for those entities enumerated in the statute. Based upon the change in the language of R.C. 307.41, I find that 1955 Op. Att'y Gen. No. 4806, p. 68, is no longer valid.

a problem with disciplining the employee when that employee is an employee of another elected official such as a deputy sheriff?"

I have interpreted your question as whether the board of county commissioners may discipline an employee of an elected county official for failing to adhere to the board's regulation requiring county employees to wear seat belts while operating a vehicle owned or leased by the county. Pursuant to a telephone conversation you had with a member of my staff, you stated that at the present time the county has adopted no formal plan for disciplining county employees who fail to wear seat belts as required by regulation. You have, however, suggested that, upon the first infraction the employee would be subject to a written reprimand, and thereafter, the disciplinary procedures would escalate until the employee would be subject to removal.

No statute of which I am aware expressly authorizes a board of county commissioners to take disciplinary action against an employee of an elected county official. Moreover, I am unable to find any express power of a board of county commissioners from which such authority may be implied. Rather, it appears that the discipline of any such employee is within the exclusive power of the elected county official who is the employee's appointing authority. See generally R.C. 124.34 (tenure of office of employees in classified service; reduction, suspension of more than three days, removal and demotion); Huber v. Celebrezze, 14 Ohio App. 3d 299, 471 N.E.2d 181 (Franklin County 1984) (an employee in the unclassified service holds his position at the pleasure of the appointing authority). See also R.C. 124.01(D) (defining "appointing authority" as "the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution"); 1984 Op. Att'y Gen. No. 84-092 (a board of county commissioners is the appointing authority of certain county employees, see, e.g., R.C. 305.13-.16; it is not, however, the appointing authority for all county employees).

Although a board of county commissioners has no authority to discipline an employee of an elected county official for failing to adhere to a regulation promulgated pursuant to R.C. 307.42, I note that in regulating the use of vehicles pursuant to R.C. 307.42, the board of county commissioners may make the continuing use of a vehicle dependent upon compliance with any regulations promulgated by the board.

It is, therefore, my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 307.42, a board of county commissioners may promulgate a regulation requiring a county employee to wear his seat belt while operating a county owned vehicle on county business. The board of county commissioners is without authority, however, to require a county employee to wear his seat belt while operating a privately owned vehicle on county business.
2. A board of county commissioners is without authority to discipline an employee of an elected county official for failing to adhere to a regulation promulgated by the board of county commissioners pursuant to R.C. 307.42 relating to the use of a county owned vehicle.