

OPINION NO. 95-037**Syllabus:**

A citizens advisory board established under R.C. 2301.53 is not authorized to accept gifts, donations, or bequests of real or personal property.

To: Robert D. Rinfret, Holmes County Prosecuting Attorney, Millersburg, Ohio
By: Betty D. Montgomery, Attorney General, December 8, 1995

I am in receipt of your letter dated August 22, 1995, asking whether a citizens advisory board is authorized to receive and accept gifts, donations, or bequests of real and personal property. After reviewing the statutes and rules governing citizens advisory boards, I conclude that those boards do not have the authority to accept gifts, donations, or bequests of real or personal property.

In order to address your concerns, it is helpful to examine the statutes governing the creation and authority of citizens advisory boards. R.C. 2301.51 authorizes judicial corrections boards, which are formed by the courts of common pleas, to establish and administer community-based correctional facilities and programs, with the approval of the Division of Parole and Community Services of the Department of Rehabilitation and Correction. Each judicial corrections board that establishes one or more such facilities and programs must create a "citizens advisory board" and provide the citizens advisory board with any necessary staff assistance. R.C. 2301.53, .55. The citizens advisory board is a creature of statute and, as such, has only those powers and duties that it is granted by statute, either expressly or by necessary

implication. *See, e.g., State ex rel. Kuntz v. Zangerele*, 130 Ohio St. 84, 197 N.E.2d 112 (1935). R.C. 2301.54 prescribes the duties of a citizens advisory board. Those duties consist of recommending physical facilities and providing community relations services for each facility and program, regularly conducting public meetings and referring to the judicial corrections board recommendations received from the public, encouraging the provision of community services to each facility and program, and performing related duties prescribed by the judicial corrections board. R.C. 2301.54; *see also* 15 Ohio Admin. Code 5120:1-14-01(D), 5120:1-14-03(S)(3). The citizens advisory board has no express statutory authority to receive or accept gifts, donations, or bequests of real or personal property, and there is no statutory basis for implying such authority.¹

In contrast, a judicial corrections board that establishes one or more community-based correctional facilities and programs has express statutory authority to accept gifts, donations, devises, or bequests and to use the property received in any manner that is consistent with any conditions attached and that is in the interest of the facility and program. R.C. 2301.55(B). The presence of this express authority in R.C. 2301.55 suggests that the absence of similar language in R.C. 2301.54 was intended to indicate an absence of similar powers on the part of the citizens advisory board. *See, e.g., Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 158 N.E. 81 (1927). I conclude, therefore, that a citizens advisory board established under R.C. 2301.53 is not authorized to accept gifts, donations, or bequests of real or personal property.

This conclusion leads to a reasonable result. The duties of a citizens advisory board are advisory and supportive in nature. The role of the board is to make recommendations, relay information, and encourage cooperation. Even though a citizens advisory board cannot itself accept gifts, donations, or bequests, the judicial corrections board is authorized to accept such property. Any gifts, donations, or bequests intended for the use of the community-based correctional facilities and programs, the judicial corrections board, or the citizens advisory board may be accepted by the judicial corrections board and used by it in a manner that is in the interest of the facilities and programs on whose behalf the citizens advisory board functions.

For the reasons discussed above, it is my opinion, and you are so advised, that a citizens advisory board established under R.C. 2301.53 is not authorized to accept gifts, donations or bequests of real or personal property.

¹ R.C. 9.20 provides general authority for various public entities to receive and hold gifts, devises, or bequests of moneys, land, or other properties. A citizens advisory board, however, does not come within any of the categories listed in that provision.