

OPINION NO. 89-061

Syllabus:

1. Under R.C. 3313.90, a joint vocational school district board of education may enter into an agreement with a board of county commissioners whereby vocational school students will construct a juvenile treatment facility for the county, provided that such an agreement is reasonably necessary to fulfill the requirements of the vocational education program.
2. Under R.C. 307.86(C), a board of county commissioners is not required to use competitive bidding when entering into an agreement with a joint vocational school district board of education whereby vocational school students will construct a juvenile treatment facility for the county.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 26, 1989

I have before me your request for my opinion regarding the construction of a juvenile treatment residence to be used by the Greene County Juvenile Court. According to your letter, students of a local vocational school will build the residence as part of their vocational training. You ask whether the Greene County Commissioners must use competitive bidding when contracting with Greene Joint Vocational School for the construction by vocational school students of a juvenile treatment residence.

Before specifically addressing your question, it is necessary to determine whether or not a board of county commissioners and a board of education of a vocational school district have authority to enter into the proposed contract. As creatures of statute, a board of county commissioners and a board of education have only such powers as are expressly conferred by statute, or are necessarily implied therefrom. See *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraph two). R.C. 2151.65, which provides that a county may provide treatment facilities for juveniles, states in pertinent part:

Upon the advice and recommendation of the juvenile judge, the board of county commissioners may provide by purchase, lease, construction, or otherwise a school, forestry camp, or other facility or facilities where delinquent...dependent, abused, unruly...or neglected children or juvenile traffic offenders may be held for training, treatment, and rehabilitation.

Thus, a board of county commissioners has authority to contract for the construction of a juvenile treatment facility. As to whether a board of education of a joint vocational school district may agree to construct such a facility, I note that R.C. 3313.90 requires that "[e]ach school district shall...provide vocational education adequate to prepare a pupil enrolled therein for an occupation." In 1978 Op. Att'y Gen. No. 78-040 at 2-94 to 2-95, my predecessor stated:

R.C. 3313.90 vests in the board of education broad discretion to carry out this legislative mandate [to establish a vocational education program] provided that any specific statutory limitations on the board's power are not exceeded and that the specific elements of any particular program do not go beyond that which is reasonably necessary to fulfill the requirements of the vocational education curriculum. See 1976 Op. Att'y Gen. No. 76-065 (A joint vocational school may construct and sell single family residences on school land.); 1971 Op. Att'y Gen. No. 71-068 (A school may engage and compete in private

enterprise even at a profit, so long as the program is reasonably necessary to the vocational education curriculum); 1971 Op. Att'y Gen. No. 71-026 (Use of school facilities for serving meals and banquets to community organizations is justified as part of the vocational education curriculum).

See also 1981 Op. Att'y Gen. No. 81-092 (syllabus, paragraph one) (a joint vocational school district may enter into an agreement with a nonprofit corporation whereby students would construct a house on the corporation's property, provided that such an agreement is reasonably necessary to fulfill the requirements of the vocational education program). I therefore conclude that under R.C. 3313.90, a joint vocational school district board of education may enter into an agreement with a board of county commissioners whereby vocational school students will construct a juvenile treatment facility for the county, provided that such an agreement is reasonably necessary to fulfill the requirements of the vocational education program.

I turn now to your question of whether competitive bidding is required for the project. R.C. 307.86 generally requires that anything to be purchased or constructed by or on behalf of the county, at a cost in excess of ten thousand dollars, must be obtained through competitive bidding. However, R.C. 307.86 further provides that "*competitive bidding is not required when....(C) The purchase is from the federal government, state, another county or contracting authority thereof, a board of education, township, or municipal corporation....*" (Emphasis added.) Since the joint vocational school district board of education would be the contracting authority for the joint vocational school, *see* R.C. 3311.19(A), the situation at hand involves a purchase by the county from a board of education. R.C. 307.86 exempts such an agreement from competitive bidding requirements. Thus, under R.C. 307.86(C), a board of county commissioners is not required to use competitive bidding when entering into an agreement with a joint vocational school district board of education whereby vocational school students will construct a juvenile treatment facility for the county.

Therefore, it is my opinion and you are advised that:

1. Under R.C. 3313.90, a joint vocational school district board of education may enter into an agreement with a board of county commissioners whereby vocational school students will construct a juvenile treatment facility for the county, provided that such an agreement is reasonably necessary to fulfill the requirements of the vocational education program.
2. Under R.C. 307.86(C), a board of county commissioners is not required to use competitive bidding when entering into an agreement with a joint vocational school district board of education whereby vocational school students will construct a juvenile treatment facility for the county.