

**OPINION NO. 82-018****Syllabus:**

A county board of mental retardation and developmental disabilities lacks the authority to independently purchase real estate. Such purchases can be made by the board with the approval of the board of county commissioners pursuant to R.C. 5705.19(L) or by the board of county commissioners under R.C. 307.02.

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**To: John J. Plough, Portage County Prosecuting Attorney, Ravenna, Ohio**  
**By: William J. Brown, Attorney General, April 6, 1982**

I have before me your request for my opinion concerning the contracting authority of a county board of mental retardation and developmental disabilities. It is my understanding, based on information furnished by your office, that your specific concern is whether a county board of mental retardation and developmental disabilities has the authority to independently enter into a contract for the purchase of real estate for the construction of a mental retardation facility.

A county board of mental retardation and developmental disabilities, as a creature of statute, has only those powers which are expressly granted or necessarily implied. See Ebert v. Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) (power to employ implies power to award compensation); 1978 Op. Atty Gen. No. 78-027 (power of county board of mental retardation to furnish transportation implies power to purchase or lease motor vehicles). Thus, the critical inquiry in analyzing your opinion request is whether a county board of mental retardation has the express or implied power to enter into a contract for the purchase of real estate.

My immediate predecessor addressed the precise question you have raised. It was stated in 1970 Op. Atty Gen. No. 70-062, at 2-102, that "[t]here is no mention [in R.C. 5126.03, now R.C. 5126.05] or in any other section of the Revised Code of any power granted to such [county] board [of mental retardation] to purchase real property or to construct permanent improvements. Neither is there any language used from which such power may be reasonably implied." Accordingly, my predecessor concluded that a county board of mental retardation does not have the authority "to purchase a site for the construction of a permanent improvement for the mentally retarded." Op. No. 70-062 (syllabus, paragraph one).

Since the rendering of that opinion, the powers of a county board have been amended somewhat. See Am. Sub. S.B. 160, 113th Gen. A. (1980) (eff. Oct. 31, 1980); Sub. H.B. 1, 114th Gen. A. (1981) (eff. Aug. 5, 1981). Now, in addition to the power to "[a]dminister and operate facilities, programs, and services" for the mentally retarded, R.C. 5126.05(A), a county board of mental retardation has the authority to "set priorities based on available funds for the provision of . . . facilities," R.C. 5126.05(C), "[c]oordinate, monitor, and evaluate existing . . . facilities," R.C. 5126.05(D), and may "enter into contracts with other such boards and with public or

private, non-profit or profit making agencies or organizations of the same or another county, to provide the facilities, programs, and services authorized or required," R.C.5126.05.

This authority to enter into contracts for the provision of facilities, which had not been enacted when Op. No. 70-062 was written, arguably implies the power to purchase real estate. However, similar language relating to the powers of other types of local boards has been interpreted in previous opinions as implying the power to lease, but not to purchase real property. See 1977 Op. Att'y Gen. No. 77-057 (concluding that a single county community mental health and retardation board did not have the express or implied authority to purchase real property in its own name, although it could lease property under its authority to enter into contracts for the provision of facilities); 1975 Op. Att'y Gen. No. 75-084 (a single county mental health and retardation board may enter into lease agreements); 1946 Op. Att'y Gen. No. 1168, p. 628 (concluding that a child welfare board's authority to acquire such property as necessary for the proper performance of its duties, did not empower the board to purchase real estate). Cf. 1978 Op. Att'y Gen. No. 78-046 (concluding that a joint county community mental health board had the power to purchase real property pursuant to R.C. 5705.03).

I am aware of no other section of the Revised Code which expressly or impliedly authorizes a county board of mental retardation to purchase real estate, although a board does have the power to lease real property for the provision of facilities pursuant to R.C. 5126.05. Thus, I conclude that a county board of mental retardation and developmental disabilities does not have the power, either express or implied, to enter into a contract for the purchase of real property for the construction of a mental retardation facility. 1970 Op. Att'y Gen. No. 70-062 is approved and followed.

Although a county board of mental retardation and developmental disabilities is not authorized to independently purchase real estate for a mental retardation facility, the Revised Code does provide several methods by which the board may acquire necessary property and facilities. Pursuant to R.C. 5705.19(L), funds from a tax levied for "community mental retardation and developmental disabilities programs and services" must be appropriated by the board of county commissioners to the use of the county board of mental retardation and developmental disabilities. R.C. 5705.19(L) goes on to provide that:

Funds derived from a tax levy passed or renewed after October 25, 1967, which are not budgeted for operating purposes may be dispensed by the county board of mental retardation and developmental disabilities after approval by the board of county commissioners for the replacement of necessary equipment, or for acquiring, constructing, or improving facilities for programs and services pursuant to Chapter 5126. of the Revised Code. (Emphasis added.)

Thus, certain funds may, with the approval of the board of county commissioners, be used by a county board of mental retardation and developmental disabilities to acquire, construct or improve facilities.

Additionally, R.C. 307.02 authorizes the board of county commissioners to "purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish. . .[a] community mental retardation facility." Clearly, the board of county commissioners is empowered to purchase the real estate necessary to construct a mental retardation facility. See Op. No. 70-062.

I note also that R.C. 5126.05 empowers a county board of mental retardation to "receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the same according to the terms of the gift, grant, or bequest." Thus, any real property given or devised to a board may be used for a mental retardation facility. See 1981 Op. Att'y Gen. No. 81-106.

Therefore, it is my opinion, and you are advised, that a county board of mental retardation and developmental disabilities lacks the authority to independently purchase real estate. Such purchases can be made by the board with the approval of the board of county commissioners pursuant to R.C. 5705.19(L) or by the board of county commissioners under R.C. 307.02.