

OPINION NO. 90-018**Syllabus:**

Neither R.C. 307.86 nor any other provision of the Revised Code requires a board of hospital governors of a joint township district hospital to competitively bid purchases of equipment for a joint township district hospital that are made pursuant to R.C. 513.17.

To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney, Upper Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 3, 1990

You have requested my opinion regarding the application of statutory competitive bidding procedures to purchases of equipment that is to be used in a joint township district hospital. Specifically, you wish to know whether the competitive bidding requirements of R.C. 307.86 apply to purchases of hospital equipment by the board of hospital governors of a joint township district hospital, and, if not, whether any other provisions of the Revised Code subject such purchases to a competitive bidding process.

R.C. Chapter 513 authorizes a board of township trustees, acting singly or in conjunction with the boards of other townships, to establish and provide for the management and operation of a general hospital for the benefit of township inhabitants. R.C. 513.01; R.C. 513.07. Thus, R.C. 513.07 states that the boards of township trustees of any two or more contiguous townships may "form themselves into a joint township district hospital board for the purpose of establishing, constructing, and maintaining a joint township district general hospital or other hospital facilities as defined in [R.C. 140.01], and such townships shall be a part of a joint township hospital district." The members of all such boards of township trustees comprise the joint township district hospital board. *Id.* R.C. 513.16 further provides that a joint township district hospital board shall appoint a board of hospital governors to control and oversee the operation of the joint township district hospital, and "perform such other duties as are provided by [R.C. 513.17]." R.C. 513.17 in turn describes the powers, duties, and responsibilities conferred upon the board of hospital governors with respect to the construction and development of a

joint township district hospital, and the subsequent management and supervision of such hospital. As pertains herein, R.C. 513.17 reads as follows:

The board of hospital governors shall, with the consent and approval of the joint township district hospital board and as provided by sections 513.07 to 513.18 and 3702.51 to 3702.60 of the Revised Code,¹ prepare plans and specifications, and may employ technical assistance if necessary, and proceed to erect, furnish, and equip necessary buildings for a joint township general hospital. (Footnote added.)

Thus, R.C. 513.17 authorizes the board of hospital governors of a joint township district hospital, with the consent and approval of the joint township district hospital board, to furnish and equip such hospital. Certainly, implicit in the power of a board of hospital governors to furnish and equip a joint township district hospital is the power to purchase such furnishings and equipment as are necessary for the operation of the hospital. In this instance, you wish to know whether such purchases must be competitively bid. In particular, you have asked whether the competitive bidding requirements of R.C. 307.86 apply to such purchases by the board of hospital governors of a joint township district hospital. If not, you also wish to know whether any other provisions of the Revised Code may require that such purchases be competitively bid.

I commence my analysis with R.C. 307.86, which addresses competitive bidding in the case of purchases and leases by counties and certain county contracting authorities. R.C. 307.86 reads, in pertinent part, as follows:

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05² of the Revised Code, shall be obtained through competitive bidding. (Emphasis and footnote added.)

Divisions (A) through (F) of R.C. 307.86 further describe the various circumstances in which the foregoing competitive bidding requirement does not apply, and R.C. 307.87-91 set forth the particular notice and bidding procedures that are to be followed whenever competitive bidding is required by the terms of R.C. 307.86.

Thus, as pertains herein, R.C. 307.86 requires the competitive bidding of any purchase of any product by or on behalf of a county, or a contracting authority as defined in R.C. 307.92, at a cost in excess of ten thousand dollars. R.C. 307.92's definition of "contracting authority" reads as follows:

As used in sections 307.86 to 307.91, inclusive, of the Revised Code, "contracting authority" means any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof.

¹ R.C. 3702.51-60 set forth certificate of need requirements that must be satisfied by certain health care facilities before such facilities may offer health and medical services to persons in need of those services.

² The exceptions provided for in the Revised Code sections thus enumerated have no application in this particular instance.

Accordingly, whether the competitive bidding requirement of R.C. 307.86 applies to purchases of hospital equipment for a joint township district hospital will depend, *inter alia*, upon the extent to which such purchases are undertaken by or on behalf of the county or a contracting authority as defined in R.C. 307.92.

It is apparent, however, that such purchases are undertaken by or on behalf of neither the county nor the contracting authorities described in R.C. 307.92. A joint township hospital district is, pursuant to R.C. 513.07, comprised of the territory of the contiguous townships that join in establishing such district. A joint township hospital district is, therefore, a political subdivision separate and distinct from both the townships that participate in its creation, and the county or counties in which those townships are situated. 1946 Op. Att'y Gen. No. 1161, p. 619 (syllabus, paragraph one) ("[a] joint township hospital district established under [G.C. 3414-1, now R.C. 513.07] is a subdivision separate and distinct from the other subdivisions whose territory may be included within its boundary"). See also 1987 Op. Att'y Gen. No. 87-079 at 2-518; 1960 Op. Att'y Gen. No. 1234, p. 205, at 207 ("[t]ownship trustees when acting as a joint township district hospital board are not, of course, dealing specifically with affairs of their respective townships, but are representing a separate district which has been termed a separate subdivision"). A joint township hospital district is formed for the purpose of establishing a joint township district hospital that will provide hospital and medical services to the residents of the townships that comprise the district. R.C. 513.07; R.C. 513.17; 1980 Op. Att'y Gen. No. 80-068 at 2-269. Responsibility for furnishing and equipping a joint township district hospital rests with the board of hospital governors, R.C. 513.17, which is comprised of township and district electors who are appointed by the joint township district hospital board in accordance with the terms of R.C. 513.16. See 1989 Op. Att'y Gen. No. 89-060.

Thus, a joint township hospital district is neither a county agency nor an administrative subdivision of county government. Similarly, a joint township district hospital board and a board of hospital governors do not perform their statutory duties and responsibilities, including the purchase of equipment for a joint township district hospital, on behalf of the county, or any agency, board, commission, or authority thereof. Further, neither a joint township district hospital board nor a board of hospital governors functions as a county agency or county board. Accordingly, for purposes of R.C. 307.86, a joint township district hospital board and a board of hospital governors of a joint township district hospital are not "contracting authorit[ies]" as defined in R.C. 307.92, and do not act or function on behalf of such contracting authorities. I conclude, therefore, that the competitive bidding provisions of R.C. 307.86 do not apply to purchases of hospital equipment by the board of hospital governors of a joint township district hospital.

You have also asked whether there are any Revised Code provisions other than R.C. 307.86 that impose a competitive bidding requirement with respect to purchases of equipment for a joint township district hospital. My research in that regard has not disclosed any such Revised Code provision. First, there is no provision within R.C. Chapter 513 itself that subjects such purchases to a competitive bidding process. R.C. 513.17 simply states that the board of hospital governors of a joint township district hospital shall, with the consent and approval of the joint township district hospital board, "erect, furnish, and equip necessary buildings for a joint township general hospital." R.C. 513.17 makes no further statement regarding the precise manner in which the board of hospital governors shall effect purchases of equipment for a joint township district hospital, and, in particular, makes no statement that such purchases must be competitively bid. Cf., e.g., R.C. 339.05 (setting forth the circumstances in which a board of county hospital trustees may adopt bidding procedures and purchasing policies for the purchase of supplies and equipment for a county hospital in lieu of following the competitive bidding procedures of R.C. 307.86-.92). See generally *Sentinel Security Systems v. Medkeff*, 36 Ohio App. 3d 86, 521 N.E.2d 7 (Summit County 1987) (applying and harmonizing former versions of R.C. 307.86 and R.C. 339.05); 1950 Op. Att'y Gen. No. 1535, p. 136, at 137 ("[t]here is neither a constitutional provision or general statute in Ohio requiring the purchase of furnishings and equipment for joint township district hospitals to be entered into by competitive bidding, nor is there such provision in the joint township hospital act itself"). Further, while there are several provisions throughout other chapters of R.C. Title 5

(townships) that subject certain township contracting and purchasing activities to competitive bidding procedures, it is apparent that none of those provisions apply to purchases of hospital equipment by the board of hospital governors of a joint township district hospital. *See, e.g.,* R.C. 505.10 (competitive bidding of purchases of new motor vehicles, road machinery, equipment, or tools by a board of township trustees); R.C. 511.12 (competitive bidding applicable to contracts by a board of township trustees for the construction and erection of a township memorial building, monument, statue, or memorial); R.C. 511.23(D) (the procuring of goods and the awarding of contracts by the board of park commissioners of a township park district shall be done in accordance with the competitive bidding procedures established for a board of county commissioners by R.C. 307.86-.91); R.C. 515.01 (competitive bidding applicable to contracts by a board of township trustees in excess of ten thousand dollars for lighting unincorporated township areas). *See also* R.C. 5549.21 (competitive bidding of purchases or leases of machinery and tools by a board of township trustees for use in constructing or repairing township roads and culverts); R.C. 5575.01 (a contract in excess of one thousand dollars for the maintenance or repair of township roads shall be let by a board of township trustees by way of competitive bidding).

It is, therefore, my opinion, and you are advised that neither R.C. 307.86 nor any other provision of the Revised Code requires a board of hospital governors of a joint township district hospital to competitively bid purchases of equipment for a joint township district hospital that are made pursuant to R.C. 513.17.