

OPINION NO. 86-024**Syllabus:**

1. When a request for the expenditure of county moneys is properly submitted to the board of county commissioners for allowance under R.C. 307.55 and R.C. 319.16, the board may disallow the request if the board determines that the expenditure is not authorized by law; the board may allow a lesser amount than was requested if the board determines that the expenditure is authorized by law, but the amount which was requested is unreasonable.
2. A county officer, employee, agent, board, or commission may enter into a contract under which payments are to be made from the county treasury without the allowance of the board of county commissioners under R.C. 307.55 and R.C. 319.16 only if such county officer, employee, agent, board, or commission has clear statutory authority to do so.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 6, 1986

I have before me your request for an opinion on the following questions:

1. Upon what basis may the board of county commissioners disapprove a request for the expenditure of county moneys properly submitted to the board for approval or disapproval?
2. Under what circumstances may a county officer, employee, agent, board, or commission incur binding contractual obligations on behalf of the county without the concurrence of the board of county commissioners?

Your questions are based upon the provisions of R.C. 307.55 and R.C. 319.16 which govern the payment of claims against a county. R.C. 307.55, states, in part:

No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.

Similarly, R.C. 319.16 states, in part: "The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal so authorized by law." Pursuant to those provisions, the county auditor may not issue a warrant for the payment of any claim against the county unless: (1) the claim is allowed by the board of county commissioners; (2) the amount due is fixed by law; or (3) the amount due is authorized to be fixed by some person or tribunal other than the board of county commissioners and is allowed by such person or tribunal.

Your first question concerns instances in which the approval of the board of county commissioners is required under R.C. 307.55 and R.C. 319.16 for the expenditure of particular county moneys. See, e.g., Commissioners of Belmont County v. Ziegelhofer, 38 Ohio St. 523, 527 (1882) (discussing "that class of claims that cannot be paid except upon the allowance of the county commissioners"). You have asked upon what basis the board of county commissioners may disapprove a request for the expenditure of county moneys when the request has been properly submitted to the board for approval or disapproval.

In 1985 Op. Att'y Gen. No. 85-066, I had occasion to consider the standard which county commissioners are to apply in determining whether a particular claim should be allowed under R.C. 307.55 and R.C. 319.16. Op. No. 85-066 states, at 2-250:

It is clear that the purpose of requiring that claims against the county be allowed by the county commissioners is to permit the commissioners to determine whether a particular claim is valid. See, e.g., State ex rel. Gerke v. Board of Commissioners, 25 Ohio St. 364... (1875); Burnet v. Auditor of Portage County, 12 Ohio 54 (1843). Such a determination of validity has been found to consist of two parts: first, a determination as to whether the claim has a legal basis; and, second, a determination as to what amount should be paid. See, e.g., Jones v. Commissioners of Lucas County, 57 Ohio St. 189, 48 N.E. 882 (1897); State ex rel. Flanagan v. McConnell.

In Op. No. 85-066, I considered several questions concerning the reimbursement of amounts expended by public officials. I concluded that the county commissioners may disallow claims for reimbursement of such amounts if they find that the expenditures were not lawfully incurred, and that the county commissioners may allow less than the amounts claimed if they find that the claims have a legal basis, but the amounts claimed are unreasonable. "The county commissioners may refuse to allow a claim for reimbursement of [amounts paid] if the [amounts] were not paid pursuant to statutory authority, and may allow no more than a reasonable amount for any claim." Id. at 2-252.

The same general principles discussed in Op. No. 85-066 are applicable to your first question. The board of county commissioners is required under R.C. 307.55 and R.C. 319.16 to review claims against the county to determine whether they are valid. See, e.g., State ex rel. Gerke v. Board of Commissioners, 26 Ohio St. 364 (1875). The board of county commissioners may refuse to approve a claim properly submitted under R.C. 307.55 and R.C. 319.16 if the board determines that the claim does not have a legal basis; the board may allow a lesser amount than was requested if the board determines that the claim has a legal basis, but the amount which was requested is unreasonable. See, e.g., Jones v. Commissioners of Lucas County, 57 Ohio St. 189, 48 N.E. 882 (1897); State ex rel. Flanagan v. McConnell, 28 Ohio St. 589 (1876).

Your second question asks what circumstances must be present to enable a county officer, employee, agent, board, or commission to incur binding contractual obligations on behalf of the county without the concurrence of the board of county commissioners. It is my understanding that you wish to know when a county officer, employee, agent, board or commission may enter into a contract under which payments are to be made from the county treasury without the allowance of the county commissioners under R.C. 307.55 and R.C. 319.16. It is axiomatic that each county officer, employee, agent, board, or commission has such powers as are granted, expressly or through necessary implication, by provisions of statute. See, e.g., State ex rel. Kuntz v. Zangerle, 130 Ohio St. 84, 197 N.E. 112 (1935). It is clearly impossible for me to consider, in this opinion, the statutory powers of all county officers, employees, agents, boards, and commissions. I am, therefore, setting forth a discussion of general rules which are applicable in the absence of particular statutory provisions to the contrary.

As discussed above, R.C. 307.55 and R.C. 319.16 provide that claims against the county may be paid without allowance by the county commissioners where the amount due is fixed by law or is authorized to be fixed by some other person or tribunal. See generally Op. No. 85-066 n. 1 at 2-248 through 2-249. Thus, where a provision of law sets forth an amount that is to be paid from the county treasury, such amount may be paid without allowance by the county commissioners or any other person or tribunal. For example, R.C. 141.05 states that each common pleas judge or probate judge is, within certain limits, to receive annual compensation in the amount of eighteen cents per capita for the population of the county in which he resided when elected or appointed, and provides that such compensation shall be paid from the treasury of the county upon the warrant of the county auditor. The county auditor may issue warrants for such compensation pursuant to statute, without the allowance of any official or tribunal. See also, e.g., R.C. 325.01 (manner of compensating certain county officials).

In instances in which a person or entity other than the board of county commissioners is authorized to fix the amount of a claim, that person or entity may fix the amount and allow the payment without obtaining the concurrence of the board of county commissioners. An example of such an instance appears in R.C. Chapter 345. R.C. 345.08 authorizes the taxing authority of a county to appoint a board of trustees to handle funds for establishing a soldiers' memorial. Other provisions of R.C. Chapter 345 authorize the board of trustees to enter into contracts to establish and operate such a memorial. See, e.g., R.C. 345.10; R.C. 345.12-.14. R.C. 345.11 establishes

"The Memorial Fund," and states that such fund "shall be paid out on the order of the board of trustees, certified by the president and secretary of such board." Thus, the approval of the board of county commissioners is not required. See Board of Commissioners v. A. Bentley & Sons Co., 103 Ohio St. 443, 448-49, 134 N.E. 441, 442 (1921) ("[t]he memorial building trustees were expressly authorized and empowered to act in the matter and they did determine the amount of the claim [under a contract for the erection of a county memorial building] and the same was approved and allowed by them. There could be no reason for requiring the presentation [to the board of county commissioners] of a claim based upon such express contract clearly authorized..."); 1913 Op. Att'y Gen. No. 76, vol. I, p. 208. Other examples appear elsewhere in the Revised Code. See, e.g., R.C. 325.071 (providing furtherance of justice fund for the county sheriff and stating: "[u]pon the order of the county sheriff, the county auditor shall draw his warrant on the county treasurer, payable to the county sheriff or such other person as the order designates"); R.C. 325.12 (providing furtherance of justice fund for the county prosecutor and stating: "[u]pon the order of the prosecuting attorney, the county auditor shall draw his warrant on the county treasurer, payable to the prosecuting attorney or such other person as the order designates"); R.C. 325.17 (authorizing certain county officers to fix the compensation of their employees and providing that, when the compensation is so fixed, it "shall be paid biweekly from the county treasury, upon the warrant of the auditor"); R.C. 5126.05(J) (authorizing a county board of mental retardation and developmental disabilities to "authorize expenditures for the purposes listed" in R.C. 5126.05).

It has, however, long been established that the power to bind the county to make particular expenditures of money without the allowance of the county commissioners is an exception to the general procedure for financing county operations, and that it should not be found to exist unless it has been clearly granted by statute. State ex rel. U. S. Ballot Box Co. v. Ratterman, 2 Ohio Cir. Dec. 364 (Hamilton Cir. Ct. 1889), concerned a situation in which a county sheriff was authorized by R.S. 2928 to "provide at the expense of the county, a sufficient number of ballot boxes for use in said county," with the limitation that the boxes should cost no more than twenty-five dollars each. The court considered whether the sheriff had the power to bind the county by a purchase within the twenty-five dollar limit, so that the auditor could pay the bill even though it had not been allowed by the county commissioners. The court concluded that the sheriff did not have such power, since that power was not expressly given and could not be implied from the statutory language. The court stated, at 365:

For good and sufficient reasons it is the policy of our statutes upon this subject, that the management of the official affairs of the county should be entrusted to a board elected by the people for that purpose, and that as a general rule, no claim shall be allowed against the county, unless first submitted to and approved by them, and unless their decision is appealed from or otherwise reviewed by the courts. There are a few exceptions to this rule, where other tribunals or officers may allow such claims - but in such cases the power to do so is clearly and explicitly conferred.

To the same effect is State ex rel. Flanagan v. McConnell, cited in the Ratterman case. State ex rel. Flanagan v.

McConnell concerned statutory language which required the county commissioners to furnish the clerk of courts with blanks, stationery, and other supplies and stated: "all of which articles the clerks may themselves procure, and shall be allowed and paid for upon their certificate." The court held that this language did not authorize the clerk to fix conclusively the amounts which the county was to pay for such supplies, and that no payments could be made for such supplies unless they were allowed by the county commissioners. The court stated:

Did the legislature...clearly intend to clothe the clerks of courts with unlimited power to procure whatever articles they should deem necessary to the prompt discharge of their duties, and to fix the prices of all such articles according to their sole discretion; and was it intended that the certificate of such clerk should be conclusive evidence as against the county, not only that the articles were in fact procured for the use of the clerk, but that they were necessary for the prompt discharge of his duties, and that the prices stated in the account or claim are just and reasonable? A power so liable to great abuse ought not to be raised by doubtful implication. To justify its recognition, the terms which confer it should be clear and unmistakable.

...The statute does not in terms authorize the clerk, on behalf of the county, to fix the price to be paid from its treasury for the articles procured by him. Nor do we think the authority to procure the articles necessarily implies a power to bind the county to pay whatever price he may think proper. He may procure them on his own responsibility, or he may agree that the county shall pay for them whatever they are reasonably worth; and in either case, if they be articles necessary to the prompt discharge of his duties as clerk, he may thereby create a liability or obligation on the part of the proper county officers to allow and pay a fair and reasonable price for them.

28 Ohio St. at 592-94. Accord, Lyle Printing Co. v. Commissioners of Highland County, 8 Ohio N.P. 182 (C.P. Highland County 1900) (reaching the same conclusion under a later version of the statute). See also 1922 Op. Att'y Gen. No. 3750, vol. II, p. 956 (finding that, since proper and necessary expenses of the board of deputy state supervisors of elections were to be paid from the county treasury as other county expenses, a claim for the purchase of an adding machine could not be paid without approval of the county commissioners; R.C. 3501.17 now states: "[p]ayments shall be made upon vouchers of the board of elections certified to by its chairman or acting chairman and the director or deputy director, upon warrants of the county auditor").

The general rule is, thus, that a county official who is authorized to provide or procure certain supplies is not, absent clear statutory authority, authorized to bind the county to pay particular amounts for such supplies. Rather, as a general rule, expenditures for such supplies may not be made unless the county commissioners have allowed the expenditures under R.C. 307.55 and R.C. 319.16. See State ex rel. Flanagan v. McConnell; State ex rel. U. S. Ballot Box Co. v. Ratterman. The same rule applies also to contracts for services. See Jones v. Commissioners of Lucas County, 57 Ohio St. at 214, 48

N.E. at 886 ("[t]he word 'claim,' as used in these statutes, we think naturally imports a matter of charge which is based upon some statute, or grows out of the performance of some authorized contract, wherein the inquiry of the commissioners...is confined to whether or not the service was rendered, and, as to other claims, to determine the amount due..."); Commissioners of Belmont County v. Ziegelhofer; 1921 Op. Att'y Gen. No. 1905, vol. I, p. 231.

It is, of course, possible that there may be questions as to whether particular statutory language is sufficient to permit a person or body other than the board of county commissioners to allow the payment of a claim against the county. See, e.g., R.C. 5543.19(A) ("[t]he county engineer may, when authorized by the board of county commissioners and not required...to use competitive bidding, employ such laborers and vehicles, use such county employees and property, lease such implements and tools, and purchase such materials as are necessary in the construction, reconstruction, improvement, maintenance, or repair of roads by force account"); McMichael v. Van Ho, 8 Ohio Misc. 281, 219 N.E.2d 831 (C.P. Paulding County 1966) (when the county commissioners have duly authorized the county engineer to undertake a project by force account, the engineer may enter into contracts for that project and allow claims thereon, thereby binding the county); 1931 Op. Att'y Gen. No. 3139, vol. I, p. 527 at 529 (finding, in reliance upon Board of Commissioners v. A. Bentley & Sons Co., that, when the county surveyor [now county engineer] is authorized to act by force account, "the county surveyor has the sole power to enter into contracts with laborers for such purpose and when the same have been properly made, the county commissioners have nothing to do with the allowance of the claim"); 1919 Op. Att'y Gen. No. 257, vol. I, p. 450 (finding, in reliance upon State ex rel. U. S. Ballot Box Co. v. Ratterman and State ex rel. Flanagan v. McConnell, that claims arising under actions taken by the county surveyor when proceeding by force account could not be paid unless they were allowed by the county commissioners; McMichael v. Van Ho, 8 Ohio Misc. at 289, 219 N.E.2d at 838, stated that 1919 Op. No. 257 was "an opinion flying in the face of the plain meaning of plain words used in the statute"). See also Op. No. 85-066 at 2-252 (concluding that, even though money for staff development and continuing education has been appropriated to a particular county office, expenditures covered by R.C. 325.191 may not be paid unless they are allowed by the board of county commissioners). The meaning of particular statutory language, and its effectiveness in creating an exception to the general rule that claims may not be paid unless they are allowed by the county commissioners, must, of course, be determined on a case-by-case basis.

In response to your second question, I conclude, therefore, that a county officer, employee, agent, board, or commission may enter into a contract under which payments are to be made from the county treasury without the allowance of the board of county commissioners under R.C. 307.55 and R.C. 319.16 only if such county officer, employee, agent, board, or commission has clear statutory authority to do so.

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

1. When a request for the expenditure of county moneys is properly submitted to the board of county commissioners for allowance under R.C.

307.55 and R.C. 319.16, the board may disallow the request if the board determines that the expenditure is not authorized by law; the board may allow a lesser amount than was requested if the board determines that the expenditure is authorized by law, but the amount which was requested is unreasonable.

2. A county officer, employee, agent, board, or commission may enter into a contract under which payments are to be made from the county treasury without the allowance of the board of county commissioners under R.C. 307.55 and R.C. 319.16 only if such county officer, employee, agent, board, or commission has clear statutory authority to do so.