

**OPINION NO. 94-021****Syllabus:**

The competitive bidding requirement of R.C. 307.86 does not apply to contracts made on behalf of a joint solid waste management district by the district's board of directors.

---

**To: Tim Oliver, Warren County Prosecuting Attorney, Lebanon, Ohio**

**By: Lee Fisher, Attorney General, May 2, 1994**

You have requested an opinion whether the competitive bidding requirements of R.C. 307.86 apply to the procurement practices of a joint solid waste management district formed pursuant to R.C. 343.01(A)(2).

**A Joint Solid Waste Management District Is Established Pursuant to R.C. 343.01 and R.C. 3734.52**

In 1988, the General Assembly enacted 1987-1988 Ohio Laws, Part III 4418 (Am. Sub. H.B. 592, eff. June 24, 1988), which provides for the establishment of mandatory solid waste management districts throughout the state. R.C. 343.01(A); R.C. 3734.52(A). R.C. 3734.52(A) requires each board of county commissioners to "either ... establish and maintain a solid waste management district under Chapter 343. of the Revised Code, or ... participate in establishing and maintaining a joint solid waste management district with one or more other such boards under that chapter." *See also* R.C. 3734.52(B).

A joint solid waste management district consists of all the incorporated and unincorporated territory within the counties forming the joint district except that "[i]f a municipal corporation is located in more than one solid waste management district, the entire municipal corporation shall be considered to be included in and shall be under the jurisdiction of the district in which a majority of the population of the municipal corporation resides." R.C. 343.01(A). In some cases, therefore, a county solid waste management district includes territory

outside of the county boundaries. In any case, a joint solid waste management district is comprised of the whole or portions of two or more counties. Once established, a joint solid waste management district is managed by a board of directors that is composed of the boards of county commissioners of the counties that constitute the joint district. R.C. 343.01(B).<sup>1</sup> The authority of the board of directors includes the authority to enter into contracts for the acquisition, construction, improvement, enlargement, equipment, maintenance, or operation of any solid waste facilities. R.C. 343.04.

### **The Competitive Bidding Requirements of R.C. 307.86**

R.C. 307.86 sets forth competitive bidding requirements 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 6137.05 of the Revised Code, shall be obtained through competitive bidding.

The provisions of R.C. 307.86 apply only to those described transactions undertaken "by or on behalf of the county or contracting authority." *Id.* "Contracting authority" is defined by R.C. 307.92 as "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." Thus, whether the provisions of R.C. 307.86 apply to a joint solid waste management district depends upon whether the transactions enumerated in R.C. 307.86, when undertaken by the board of directors of a joint solid waste management district, are undertaken by or on behalf of a county or a "contracting authority," as defined in R.C. 307.92.

### **The Transactions of a Joint Solid Waste Management District Are Not Undertaken on Behalf of a County or a "Contracting Authority" As Defined by R.C. 307.92**

A joint solid waste management district comprises the whole or portions of the territory of two or more counties. R.C. 343.01(A) and R.C. 3734.52(A). Prior Attorney General opinions have determined that regional governmental entities comprising a geographic area that

---

<sup>1</sup> R.C. 343.011 sets forth the procedure by which a "regional solid waste management authority" may be formed to execute "all the duties and responsibilities imposed on or granted to" the board of county commissioners of a county or the board of directors of a joint solid waste management district under R.C. Chapter 343. You have explained, however, that no regional solid waste management authority has been formed pursuant to R.C. 343.011, and therefore the joint solid waste management district in question is managed by a board of directors composed of the boards of county commissioners of the counties that constitute the joint district.

exceeds the territory of a single county are not agencies, departments, subdivisions, or units of county government. For example, 1983 Op. Att'y Gen. No. 83-064 addressed the question whether a joint board of county commissioners formed pursuant to R.C. 2151.34 and R.C. 2151.65 for the purpose of establishing a multicounty juvenile detention and rehabilitation district is a county board entitled to legal representation from the county prosecuting attorney pursuant to R.C. 309.09(A). Concluding that it was not, Op. No. 83-064 stated at 2-268 as follows:

While the terms "county board" and "county officers" are not statutorily defined, it has been opined by several of my predecessors that, when a joint-county entity is created, by virtue of the fact that such board or officers may exercise authority over an area exceeding the territorial limits of any one county, such board or officers may not be considered a county board or county officers. For example, in 1979 Op. Att'y Gen. No. 79-019, one of my predecessors concluded that a multicounty felony bureau was not a county board for purposes of R.C. 309.09 and that the director of such bureau was not a county officer for purposes of R.C. 309.09. Op. No. 79-019 states, at 2-69:

Moreover, there is ample authority for the proposition that the term "county board" as used in R.C. 309.09, does not apply to any entity established on a multi-county basis. 1975 Op. Att'y Gen. No. 75-014 (joint county community mental health and retardation board); 1964 Op. Att'y Gen. No. 95, p. 157 (joint county airport facility); 1958 Op. Att'y Gen. No. 2736, p. 567 (regional planning commission). Accordingly, I am of the opinion that a Multi-County Felony Bureau is not a "county board" for purposes of R.C. 309.09.

*See also* 1986 Op. Att'y Gen. No. 86-068 at 2-374 ("[a] regional council of governments is formed of the various political subdivisions that participate in its establishment, *see* R.C. 167.01, and is, therefore, not a county board. It appears, as a result, that a county prosecutor is under no duty to advise such a council"); 1985 Op. Att'y Gen. No. 85-012 at 2-45 ("[s]ince a regional organization for civil defense is not a county agency or board, it is not entitled under R.C. 309.09 to the representation of a prosecuting attorney. In this respect, it is similar to other regional bodies created pursuant to statute which are not entitled to the general legal counsel of a prosecuting attorney"); 1981 Op. Att'y Gen. No. 81-059 at 2-237 ("a joint recreation district created pursuant to R.C. 755.14(C), its board of trustees, its officers, and its employees, are not included with the clientele for whom the prosecuting attorney must act as legal adviser under R.C. 309.09").

Similarly, 1989 Op. Att'y Gen. No. 89-102 considered the question whether a prosecuting attorney has a duty pursuant to R.C. 309.09(A) to provide legal advice to the board of directors of a joint solid waste management district. Noting that a joint solid waste management district is "an autonomous legal entity distinguishable from the individual counties that, pursuant to R.C. 343.01(A)(2) and R.C. 3734.52(A) and (B), participate in its creation," *id.* at 2-492, Op. No. 89-102 advised that a joint solid waste management district board of directors is not a county board, and the individual members of such board are not county officers, for purposes of receiving legal advice or representation from the prosecuting attorney of a county that has joined in the establishment of such district.<sup>2</sup> In support of that conclusion Op. No. 89-102 stated at 2-493 as follows:

---

<sup>2</sup> R.C. 343.01 was amended by Sub. H.B. 723, 119th Gen. A. (eff. April 16, 1993) to provide that the board of directors of a joint solid waste management district "may require

A joint solid waste management district is, pursuant to R.C. 343.01(A)(2) and R.C. 3734.52(A) and (B), a multicounty entity comprised of the incorporated and unincorporated territory of all the counties that join in its creation and, accordingly, is neither an administrative subdivision nor a subordinate department of any of those counties. In that regard the statutory provisions set forth above confer upon a joint solid waste management district board of directors powers, duties, and responsibilities that affect, and are to be exercised with respect to, the joint solid waste management district as a whole, and not merely the individual counties included as a part thereof. Insofar as a joint solid waste management district board of directors exercises its authority on a district-wide basis, one cannot reasonably characterize the board and its individual members as a county board and county officers for purposes of R.C. 309.09(A). (Footnote omitted.)

The same rationale applies in determining whether the transactions enumerated in R.C. 307.86, when undertaken by the board of directors of a joint solid waste management district, are undertaken by or on behalf of a county or a "contracting authority," as defined in R.C. 307.92. Because a joint solid waste management district is an entity that is distinct from the county and is not a subdivision or subordinate department of the county, Op. No. 89-102, it has no authority to contract for or on behalf of the county or any county agency, department, authority, commission, office or board. A joint solid waste management district, therefore, is not a "contracting authority" as defined by R.C. 307.92.

Further, the board of directors of a joint solid waste management district undertakes transactions on behalf of the joint solid waste management district. R.C. 343.01; R.C. 343.04. Because a joint solid waste management district is not a subdivision or subordinate department of the county, the board of directors of a joint solid waste management district does not function as a county agency or county board, and does not undertake transactions on behalf of the county or any agency, board, commission, or authority thereof. *See* Op. No. 89-102. Accordingly, for purposes of R.C. 307.86, the board of directors of a joint solid waste management district is not a "contracting authority" as defined in R.C. 307.92, and does not act by or on behalf of a county or a contracting authority. *See generally* 1990 Op. Att'y Gen. No. 90-018. Therefore, the competitive bidding requirements of R.C. 307.86 have no application to contracts made by the board of directors of a joint solid waste management district on behalf of the joint solid waste management district. However, given the strong public policy reasons for competitive bidding in instances in which public money is expended, the board of directors of a joint solid waste management district should give serious consideration to awarding contracts on a competitive basis. *See generally* 1987 Op. Att'y Gen. No. 87-079.<sup>3</sup>

---

written opinions or instructions from the prosecuting attorney of any of the counties forming the district in matters connected with the board's official duties, and the prosecuting attorney shall provide the written opinion or instructions as though he had been designated to serve as the district's legal advisor under ... this section." R.C. 343.01(E)(2). Thus, the prosecuting attorney of any of the counties forming a joint solid waste management district has a duty to advise the district's board of directors when so requested by the board. Prior to this amendment, a county prosecuting attorney had no duty to advise a joint solid waste management district.

<sup>3</sup> Competitive bidding requirements are intended to assure the best and most efficient expenditure of public moneys and to prevent fraud and collusion in the making of public contracts. *See generally* 1987 Op. Att'y Gen. No. 87-079. Since these purposes are also

**Conclusion**

On the basis of the analysis above, it is my opinion, and you are hereby advised, that the competitive bidding requirement of R.C. 307.86 does not apply to contracts made on behalf of a joint solid waste management district by the district's board of directors.

---

applicable to public entities established on a multi-county basis, the General Assembly might wish to consider an express statutory provision to require competitive bidding for contracts awarded on behalf of a joint solid waste management district.