

OPINION NO. 77-057**Syllabus:**

In specific answer to your question, it is my opinion and you are so advised that community boards of mental health and retardation established in Chapter 340 of the Ohio Revised Code do not have the authority to purchase real property for a mental health or retardation facility. Such power and authority lies with the board of county commissioners, who may appropriate private property for a mental health or retardation facility under R.C. 307.02.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, October 11, 1977

Your request for my opinion poses the following questions:

1. May the Mental Health and Retardation Board of Montgomery County purchase real property?
2. May the Mental Health and Mental Retardation Board of Montgomery County purchase real property with money from the Montgomery County Real Property Tax Levy?
3. May the Mental Health and Mental Retardation Board of Montgomery County purchase real property with money from the Ohio Department of Mental Health and Mental Retardation and the Ohio Public Facilities Commission?

R.C. Chapter 340 established the community boards of mental health and retardation. R.C. 340.03, concerning the duties of the community boards of mental health and retardation, provides in pertinent part as follows:

Subject to the rules and regulations of the director of mental health and mental retardation, the community mental health and retardation board,
. . . shall

(A) Review and evaluate community mental health and retardation services and facilities and submit to the director

of mental health and mental retardation, the board or boards of county commissioners, . . . recommendations for reimbursement from state funds as authorized by section 5119.62 of the Revised Code and for the provision of needed additional services and facilities;

(E) Enter into contracts with state hospitals, other public agencies, and with private or voluntary hospitals and other private or voluntary non-profit agencies for the provision of mental health and mental retardation service and facilities;

It seems clear that the board has specific authority under R.C. 340.03(E) to enter into contracts with certain agencies for mental health and mental retardation services and facilities. I had occasion to consider the powers of the community boards of mental health and retardation in the 1975 Opinion of the Att'y Gen. No. 75-084. I stated in the syllabus as follows:

2. A single county mental health and retardation board may enter into lease agreements for facilities without the approval of the county commissioners. . .

In light of the foregoing, it seems clear that the community board of mental health and retardation may enter into contracts for the lease of facilities necessary to its operation.

In the 1971 Opinion of the Attorney General No. 71-070, I had occasion to consider the powers of the board of county commissioners to appropriate property for a mental health or retardation facility. I stated in pertinent part as follows:

It is clear that a community mental health board fulfills a public purpose when it submits a recommendation for additional community mental health facilities, or when it enters into contracts with existing facilities for the provision of mental health services, . . . The General Assembly might properly have granted to the community mental health boards the power of eminent domain. Instead, it specifically left this power with the board of county commissioners.

R.C. 307.02, as amended (eff. 4-20-76), concerning the powers of the board of county commissioners, provides in pertinent part as follows:

The board of county commissioners of any county, in addition to its other powers, may 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 health facility or community mental retardation facility, . . . and sites therefor. . .

The 1971 Opinion of the Attorney General No. 71-070 states in the syllabus as follows:

1. A board of county commissioners is authorized under Section 307.02, Revised Code, to appropriate private property as a site for a mental health or retardation facility upon the recommendation and request of the community mental health and retardation board.
2. Such appropriation must be in accordance with the procedure set forth in Sections 163.01 to 163.22, inclusive, of the Revised Code, which Sections are incorporated by reference in Section 307.08, Revised Code.

R.C. 307.08, as amended (eff. 2-21-67), provides in pertinent part as follows:

When, in the opinion of the board of county commissioners, it is necessary to procure real estate, . . . for a courthouse, jail or public offices, or for a bridge and the approaches thereto, or other structure, or public market place or market house, proceedings shall be had in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code.

The Board of County Commissioners must show that it was impossible to acquire the property in question by negotiation with the owners in accordance with R.C. 163.04 and that the property is sought to be appropriated for a public purpose in accordance with R.C. 163.05.

Therefore, it seems clear that the board of county commissioners has the power to appropriate private property as a site for a mental health or retardation facility, provided it is in accordance with R.C. 163.01 to R.C. 163.22, inclusive. The board of county commissioners may then lease the facility to the community board of mental health and retardation pursuant to their authority under R.C. 307.02. In 1974 Opinion of the Attorney General No. 74-015, I stated as follows:

It is well settled that county boards and officials such as a community mental health and retardation board, as creatures of statute possess only such powers and privileges as may be delegated to or conferred on them by statute, and these powers must be strictly construed. State, ex rel. Hoel v. Goubeaux, 110 Ohio St. 287, 288 (1924); Portage County v. Gates, 83 Ohio St. 19, 30 (1910); State, ex rel. Winters v. Kratt, 19 Ohio App. 454, 456 (1926).

The community board of mental health and retardation does not have the express or implied authority by statute to purchase property in its own name. The legislature specifically reserved such power to the board of county commissioners to appropriate property for a mental health or retardation facility upon the recommendations

of the community board of mental health and retardation, pursuant to R.C. 307.02. The community board of mental health and retardation does have the authority to make contracts with public or private agencies for the provision of mental health and retardation services and facilities pursuant to R.C. 340.03. It gives them the authority to lease mental health and retardation facilities and to contract with various agencies for the operation of such facilities, but it does not give them the power to purchase property in their own name.

The board of county commissioners has several sources of public funding for the acquisition of property for a mental health or retardation facility. The board of county commissioners may appropriate money from the county real property tax levy for the acquisition of a site for a mental health or mental retardation facility. R.C. 340.07, as amended (eff. 5-7-74), provides in pertinent part as follows:

The board of county commissioners of any county participating in a community mental health and retardation service district or joint county district, upon receipt from the community mental health and retardation board of a resolution so requesting, may appropriate money to a public agency for the acquisition, construction, reconstruction, maintenance, and operation of mental health and mental retardation diagnostic, treatment, rehabilitation and training facilities and programs, hospital units, schools, workshops and residential facilities for mentally ill, mentally retarded, and emotionally disturbed persons, or may appropriate money to a private non-profit corporation or association for the operation of such facilities and programs. . .

R.C. 5705.01 provides that the "taxing authority" in the case of a county is the board of county commissioners.

R.C. 5705.03 provides in pertinent part as follows:

The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47, inclusive of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. . .

In addition, R.C. 5705.02 provides in pertinent part as follows:

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except

for taxes specifically authorized to be levied in excess thereof. . .

However, R.C. 5705.221 provides for tax levies outside the ten mill limitation as follows:

At any time, the board of county commissioners of any county by a majority vote of the full membership may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county's community mental health and retardation service district established pursuant to Chapter 340 of the Revised Code. . . and that it is necessary to levy a tax in excess of such limitation during the period, for the purpose stated in the resolution.

Therefore, it seems clear that the board of county commissioners may levy a tax on the real property within the political subdivision for the purpose of acquiring property for mental health and retardation facilities.

Furthermore, the Ohio Public Facilities Commission may appropriate monies to the board of county commissioners for the acquisition or construction of mental health and retardation facilities.

R.C. 154.20, as amended (eff. 7-17-73) provides in pertinent part as follows:

(A) Subject to authorization by the general assembly under Section 154.02 of the Revised Code, the Ohio public facilities commission may issue obligations pursuant to Chapter 154 of the Revised Code to pay costs of capital facilities for mental hygiene and retardation. . .

(F) There is hereby created a fund designated the "mental health facilities improvement fund" which shall be in the custody of the treasurer of state. Subject to the bond proceedings therefor, all of the proceeds of the sale of obligations pursuant to this section shall be credited to said fund. . . Such funds shall be applied, when appropriated therefor by the general assembly, only to the purpose of paying costs of capital facilities for mental hygiene and retardation under the jurisdiction of the department of mental health and mental retardation or for participation in capital facilities for mental hygiene and retardation with the federal government, municipal corporations,

counties or other governmental agencies
or any one or more of them or to a
non-profit corporation specifically
chartered to provide a mental health
or mental retardation service when
such service fulfills a public
purpose. . . (Emphasis added)

Thus, the Ohio Public Facilities Commission may issue obligations to pay the costs of acquiring and financing a site for a mental health or retardation facility.

In specific answer to your question, it is my opinion and you are so advised that community boards of mental health and retardation established in Chapter 340 of the Ohio Revised Code do not have the authority to purchase real property for a mental health or retardation facility. Such power and authority lies with the board of county commissioners, who may appropriate private property for a mental health or retardation facility under R.C. 307.02.